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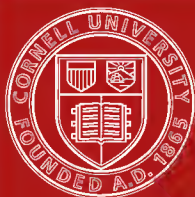
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THE PRINCIPAL  
ECCLESIASTICAL JUDGMENTS

DELIVERED IN

THE COURT OF ARCHES

1867 TO 1875



# THE PRINCIPAL ECCLESIASTICAL JUDGMENTS

DELIVERED IN  
THE COURT OF ARCHES  
1867 TO 1875

BY THE RIGHT HON.  
SIR ROBERT PHILLIMORE, D.C.L.

*'The Law of the Church of England, and its History, are to be deduced from the ancient general canon law, from the particular constitutions made in this country to regulate the English Church, from our own canons, from the Rubrics, and from any Acts of Parliament that may have passed upon the subject; and the whole may be illustrated also by the writings of eminent persons.'*—BY SIR JOHN NICHOLL IN *KEMP v. WICKES*, 3 Phillimore's Reports, 276.

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## P R E F A C E.

I ACCEPTED the office of Judge of the Arches Court of Canterbury in 1867. I resigned it in 1875.

The Court of Arches has great powers and privileges of jurisdiction. It is the only Ecclesiastical Court which has the power to pass sentence of Deprivation. It is practically the Court in which the Archbishop sits when exercising jurisdiction over a suffragan Bishop. It is the Court of Appeal from all the Diocesan Courts of the Province of Canterbury. Moreover, a recent decision of the Judicial Committee of the Privy Council has decided that it is bound to take cognisance in the *first instance*, and without the advantage which the Appellate Court enjoys of the previous sentence of a competent Court, of every case which the Bishop of a Diocese may send, by what are called *Letters of Request*, to be tried before it.

The office was, during my tenure of it, one of much honour, but really of no emolument. I do not think that in 1872 I had received enough to pay the expenses incident to my appointment in 1867. The emolument was, in fact, a very few pounds a year. I accepted it at the earnest request of Archbishop Longley, resigning for this purpose the Chancellorships of Chichester, Oxford, and Salisbury, which I

then held. At the time I accepted it his Grace promised that my acceptance of the unpaid judgeship of the Arches should be followed by my appointment to the office of Master of the Faculties when vacant.<sup>1</sup> This vacancy did not occur till 1873, when the present Archbishop of Canterbury conferred upon me the office in a manner which enhanced the value of it. The emoluments of the office of Master of the Faculties during my short tenure of it have amounted to about £600 per annum.

The Statute which, during the time I was Judge of the Court of Arches, regulated the discipline of the Clergy, 3 and 4 Vict. c. 86, was passed in 1840, after a very severe conflict and much difference of opinion in the House of Lords.

It effected very material alterations in the existing law. It destroyed all peculiar jurisdictions, under cover of which bad clergymen had sometimes sheltered themselves against the penalties due to their offences. It gave to every Bishop the power of sitting with Assessors in his own Court or of sending the case to be tried at once in the Superior Court of the Province. It directed in the former case the previous issue of a Preliminary Commission, which was to report whether there was "a *prima facie* case for further proceedings;" if so, these proceedings were to be taken before the Bishop, or to be sent at once to the Superior Court. It provided, moreover,—and this provision was ex-

<sup>1</sup> I gave a fuller narrative of these circumstances in a letter to the Archbishop of Canterbury on "Clergy Discipline," published by Messrs. Rivington in 1872.



tremely wise, and has often worked very well,—that the accused Clerk might admit before his Bishop that he was guilty of the offence charged against him; and his Bishop had then power to pass such a sentence as the law allowed without the scandal of a public trial.

Under this Statute more cases of Clergy Discipline since 1840 have been tried, I believe, than are to be found recorded for the two centuries preceding its enactment, if not for the whole period since the Reformation.

I have read statements relating to procedure in the Arches Court which would never have been made in the presence of any person really conversant with the facts, or if made, would have been immediately contradicted. For instance, cases tried thirty years ago under a system of law and procedure materially different, have been represented as illustrating the present state of the Ecclesiastical Courts, no mention whatever being made of the subsequent alteration, because such mention would at once show that the censure was inapplicable.

In the memory of the present generation, trial by Wager of Battle was allowed by a court of common law. What would be said of accusers who attacked on this score the present courts of common law, and omitted to state the fact that the law had been altered?

Some years ago the proceedings in the Ecclesiastical Courts were of a very cumbrous and unsatisfactory character.

The pleadings were unnecessarily prolix; but the great evil was the practice of taking all the evidence of witnesses in writing before an examiner, who sat in

his private room for this purpose, unchecked by the presence of counsel ; not only did this practice present serious obstacles to the discovery of the truth, but the charges for copying the evidence so taken much inflamed the costs of the suit.

In the year 1854 I brought into the House of Commons a small Bill for the introduction of *vivâ voce* evidence into the Ecclesiastical Courts, and, with the help of Lord Brougham in the House of Lords, succeeded in carrying it through Parliament (17 and 18 Vict. c. 47). Nobody unacquainted with the old system can be aware of the almost total change which the working of this little Statute has produced in the whole procedure of the Courts. Causes have ever since been conducted at the hearing exactly as they are at *Nisi Prius*. The pleadings are in cases of heresy necessarily fuller ; but in other cases the introduction of *vivâ voce* evidence and certain Rules and Regulations promulgated by Dr. Lushington, for the Arches Court, in 1867, have led to a great improvement in the pleadings.

Again, as to the alleged costs and delay incident to suits in the Arches Court. Costs are always of two kinds, those caused by the fees paid to the Court, and those caused by the fees of counsel ; these latter will be found, on inquiry, to be under the present system, the real, or, at least, the main expenses of the suit.

They are limited to a certain extent by taxation, but no Statute can prevent parties employing what counsel they please, or counsel from demanding the fees to which they think themselves entitled.

In March 1871 a Return was laid before Parliament which throws considerable light on these subjects. I am satisfied that if evidence were taken upon the question of fees, costs, and delay—a course which, in the discussion on this subject, seems to have been hitherto studiously avoided—it would have been found that the Return which I have mentioned is correct, and that the costs of the late suits, independently of the fees paid to counsel, are less than those which would be caused by suits of the same magnitude at Common Law or in Chancery, while it would also appear, I think, that they are heard with far greater expedition. I am not speaking of the Court of Appeal before the Privy Council, but of the Court of Arches.

It became my duty during my tenure of this office to adjudicate on questions relating to the Doctrine, Discipline, and Ritual of the Church.

The cases in which these questions were involved have been few in number, but of the gravest importance to the Church. The law applicable to them was often deducible from various sources and documents, framed at various epochs of our history and under various influences.

This law was necessarily derived from the leading General Councils of the Undivided Church, from a practice and usage incorporating portions of the general Canonical Jurisprudence, from Provincial Constitution, from Canons passed by the Clergy in Convocation and confirmed by the Crown, and from Statutes enacted by Parliament.

When the text of this law was doubtful, I endeavoured to find out and lay down sound general principles for the construction of it. This occurred more especially in cases of Ritual and Doctrine. With respect to the former class of cases, dealing with the question whether certain Rites and Ornaments were illegal as being, though not expressly, yet by necessary implication, prohibited inasmuch as they were connected with Roman doctrine and usages, I said, "It is my duty to form this judgment upon an historical examination—however unequal my powers may be to the task—into the principal acts of the State and the Church, which, since the great epoch of the Reformation, have introduced, accompanied, and settled the ecclesiastical establishment of this kingdom.

"It is scarcely necessary to say that where the language of a statute is plain I must obey it, or that where the Court of Appeal has laid down a principle applicable to this case I must follow it. But where I have no such guide, I must seek the exposition of the law from the general language of the cardinal statutes, the public and authoritative declarations which accompanied and illustrated them, the judicial construction which they have received, the formularies which these statutes ordered, whether with or without the concurrent sanction of the Church, though happily the latter alternative is of rare occurrence. I must also consider the Canons which bind the Clergy, and the opinions of the Bishops and great Divines of our Church, who were not unfrequently also the coun-

cillors of the State and the authors of the formularies." And after a consideration of these authorities, I arrived at the conclusion "that the similarity of the ornaments and practices in question with those in the Church of Rome did not furnish a safe criterion whereby to try the question of their legality in the Church of England. That the true criterion is conformity with primitive and catholic use, and not mere antagonism to Rome."

And acting upon the same principle, I held that "one fundamental truth was to be borne in mind, namely, that the end and object of our Church was so to reform her Doctrine and Ritual as to bring them into general harmony with those of the Primitive Catholic Undivided Church."

Among these Judgments will be found one of very grave importance in its bearing upon the general discipline of the clergy, but more especially with reference to clergymen accused of offences against morality.

The improvements which have taken place in the law of evidence are among the greatest which this generation has seen. But still a person accused of an offence against the criminal law is not admitted in any Court of Common Law to give his own evidence in defence of himself. His mouth is closed while that of his accuser is open.

Soon after I became Judge of the Court of Arches a clerk in Holy Orders was proceeded against before me, in what was, according to Ecclesiastical Law, a criminal suit upon a charge of very heinous immor-

ality. I had to consider whether the effect of the Statutes enacted to improve the law of evidence had or had not rendered the evidence of the accused clerk admissible. It never had been so previously, and Dr. Lushington had pronounced it to be still inadmissible. Being strongly of opinion that the exclusion of such evidence was unjust and inexpedient, I was glad to arrive, after a careful examination, at the conclusion, that the alterations of the law had rendered the evidence of an accused person admissible in a criminal suit in the Ecclesiastical Court.

The Judicial Committee of the Privy Council, without expressing any positive opinion as to the correctness of this interpretation of the law, appear to have tacitly assented to it.<sup>1</sup>

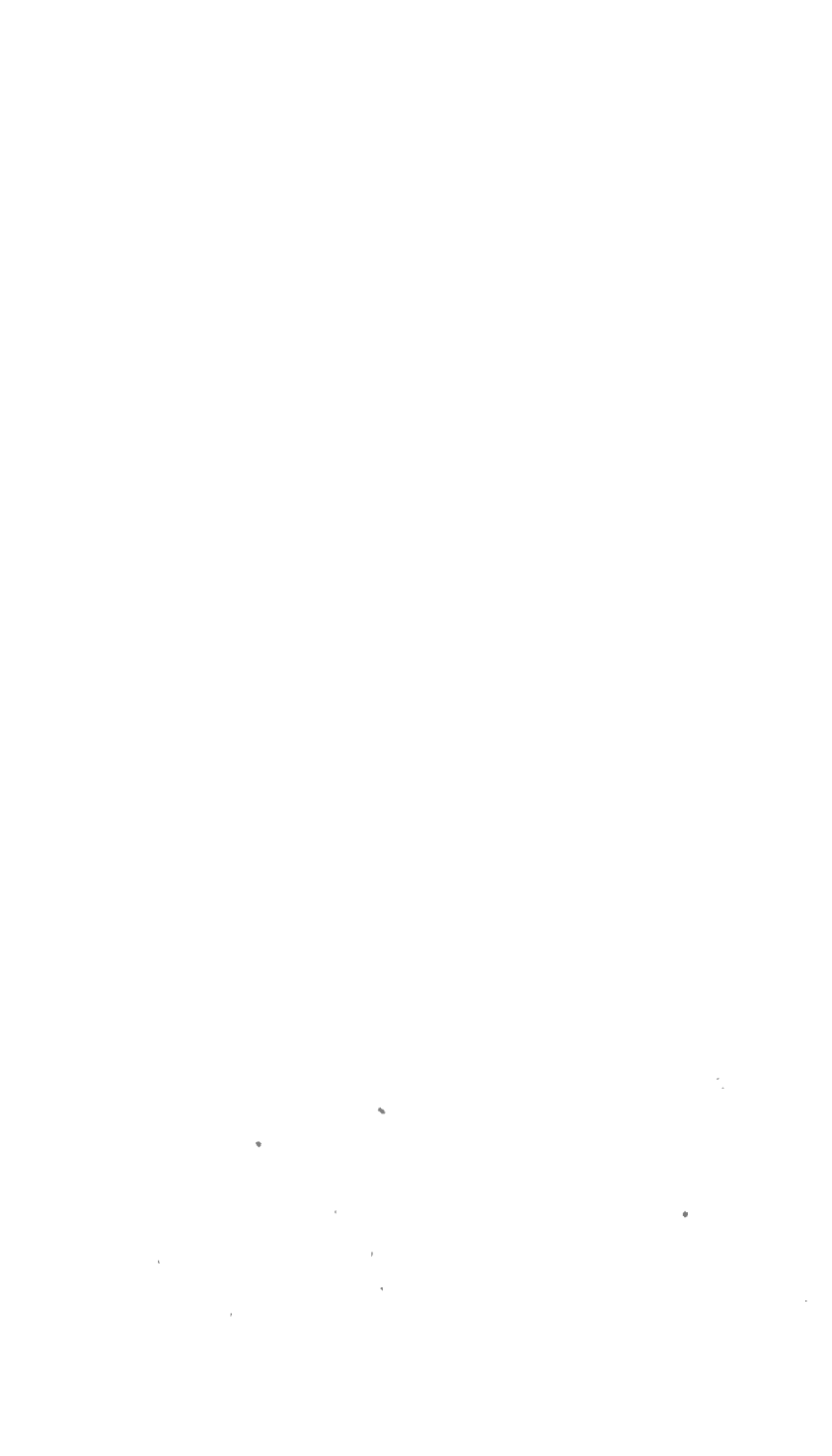
The Judgments reported in this volume often extend to great length. If any apology be needed on this account, it can, I think, be satisfactorily given. In the first place, the subjects very seriously concerned the welfare of the Church as an established institution of this realm. In the next place, the Court of Appeal did not contain, as before the abolition of Doctors' Commons it had always contained at least one Judge whose previous studies and experience had made him necessarily conversant with ecclesiastical law. Lastly, it has happened, most unfortunately, that some cases in which important points of law as to Ritual and Doctrine were raised have been undefended. Upon such points, therefore, as I decided in

<sup>1</sup> *Vide infra* my Judgment in the case of the *Bishop of Norwich v. Pearse*, and the introductory note to it.

favour of the defendant, I was obliged to state my reasons at greater length than I should have done if the Privy Council had not been about to adjudicate upon them without the assistance—the value of which can scarcely be over-estimated—of an argument from both sides.

For these, among other reasons, I have published these selected Judgments as they were delivered, briefly referring to the alterations which some of them underwent in the Court of Appeal.

I hope the publication may be useful to the Clergy and Laity generally, as well as the Bar. I may at least say, that in these Judgments I have spared no pains and declined no labour to ascertain and apply the law of the Church of England.





## LIST OF JUDGMENTS.

Both in this list and in the body of the work the Judgments are arranged in Chronological Order, except that the three Judgments in *Sheppard v. Bennett* are placed together.

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THE OFFICE OF THE JUDGE PROMOTED BY

ADLAM v. COLTHURST.

*Order made upon a parishioner who had removed earth and human bones from a churchyard to restore them—An excuse that the field upon which he had placed them was no longer in his possession, overruled.*

THIS case was first heard before my predecessor, Dr. Lushington, who made an order upon the defendant to restore the earth and bones. The defendant failed to comply with this order, and alleged as his excuse that he had parted with the possession of the field in which they had been placed to his son-in-law, who refused to allow them to be interfered with. He also pleaded bankruptcy in discharge of his costs.

The matter then came before me, and on the 21st of November 1867 I delivered the following judgment.

The defendant thereupon submitted, and filed a certificate of his performance of the decree within the time limited in the judgment.

The case is reported in the Law Reports, 2 Admiralty and Ecclesiastical, page 30.

JUDGMENT.—This case was argued before me on the 2d of November, and my judgment would have been given immediately had I not been requested to defer it for a few days, on the ground that there was a prospect of the matter being arranged out of Court. That prospect has disappeared, and I can no longer delay my judgment. The reasons assigned by the defendant for non-compliance with the order of the Court,

both as to the payment of the £100 costs, and the restoring the bones and earth which had been so improperly removed, are these, in substance at least: First, he says he is a bankrupt, and cannot pay the £100. Secondly, he says that the field into which he has removed the bones and earth out of the churchyard is no longer his, for he has transferred it to trustees for his son-in-law and daughter, and that he cannot lawfully enter upon it for the purpose of obeying the order of the Court.

Looking to the whole of the circumstances of this case, as set forth in the judgment of my predecessor, and the date and character of the pleadings before him, and the minutes of Court, I am sorry to say I have no doubt whatever that one if not both these excuses have been resorted to with the deliberate intention of rendering nugatory and treating with contempt the decree of the Court. With regard to the bankruptcy, it is alleged that the defendant became bankrupt before the decree of this Court was made—that he has an order from the Bankruptcy Court which protects him from the process of this Court. The case cited, *Wallinger v. Gurney*,<sup>1</sup> shows that the production of an interim protection order under 5 & 6 Vict. c. 116, s. 1, justifies the sheriff in discharging an insolvent out of his custody under a writ of execution, although the debt for which the execution creditor had recovered judgment did not exist until the insolvent's petition had been filed. Therefore, if it be true that the order which Mr. Colthurst has obtained be of this kind, and protects him from debts incurred subsequently to that order, he will, under the authority of this case, be discharged by the sheriff on the production of that order, though he be arrested under the writ issuing in consequence of the decree of this Court. It may, however, be that this £100 costs is not a debt provable under Mr. Colthurst's present petition in bankruptcy. It may also be that, looking to the fact that the date of the defensive allegations given in by Mr. Colthurst in this case, namely, the 21st of February, was the principal cause, according to the opinion expressed by Dr. Lushington in his judgment, of most unnecessary expense; that the date of Mr. Colthurst's becoming bankrupt was the 25th of February; that after this date Mr. Colthurst persisted in carrying on a defence in this cause which entirely failed, in which his creditors would, in no event, have the slightest interest, and which, as I have said, was the principal cause of the costs in which he has been condemned;—looking to all these facts, I am not certain, if Mr. Colthurst is not already protected from the payment of these costs under the order which he has obtained, that he will obtain an extended or fresh order of protection, by which he

<sup>1</sup> 11 C. B. (N.S.) 182; 31 L. J. (C. P.) 55.

will be enabled to evade this part of the sentence of the Court. At all events, I think the promoter has a right to require this Court to endeavour to enforce the decree for costs which he has obtained in his favour.

Let me here say a word upon the character of the offence of which Mr. Colthurst has been proved to be guilty. I cannot consider it as one of a trivial character. To remove the bones of parishioners from the churchyard into a field where they are to serve the purposes of manure, is a great affront to the feelings of Christian men; a grave violation of the rights of parishioners, as well as plainly contrary to the law of this land. The act is not less liable to this censure, if it be done by a churchwarden, and, as in this case, after he has been apprised of the unlawfulness of such conduct; although Mr. Colthurst may be guiltless, as I have no doubt he was, of any deliberate intention to hurt the feelings of anybody, and may have persuaded himself that no regard for the remains of bodies ought to prevent the making a better pathway to the church. This feeling, however, of respect and pious care for the dead bodies of Christian men is deeply rooted in the inhabitants of an English parish—it is hallowed by many associations, religious and moral, which the law recognises, and which it is the desire of our Church to cherish and promote.

The language of the prayer by which the churchyard is consecrated, while it expresses the mind of the Church, is in harmony with the feelings of the poor as well as the rich parishioner:—"O God, who hast taught us that there is a difference between the spirit of a beast which goeth downwards into the earth, and the spirit of a man that ascendeth up to God who gave it, and likewise by the example of thy holy servants, in all ages, hast taught us to assign peculiar places where the bodies of thy saints may rest in peace and be preserved from all indignities, while their souls are safely kept in the hand of their Redeemer." I need not read more; the remainder of the prayer breathes the same spirit. A great indignity, however unintentional, has been inflicted on the bones of a parishioner in this case, and it is within the especial duty and province of this Court to take care that the indignity, as far as possible, may be repaired. It is contended, however, by the counsel for Mr. Colthurst, that, as he has transferred the field in which he placed the bones and soil to trustees on behalf of Mr. Bromfield, his son-in-law, and that Mr. Bromfield will not permit him to enter such field for the purpose of executing the order of the Court, therefore the Court should decline to enforce its order.

Before noticing the general argument, I think it advisable to

call attention to certain dates and facts as they appear in the evidence.

On the 6th of September in last year, Mr. Colthurst was warned by Mr. Adlam that he was doing an illegal act in removing these bones and soil into his field. Mr. Colthurst continued to remove them, and on the 3d of October transferred by deed this field, with other property, to trustees for the use of his daughter and his son-in-law, Mr. Bromfield. What right had Mr. Colthurst to transfer to anybody this earth and these bones?

On the 10th of December the decree issued from this Court, which was the legal commencement of these proceedings. The articles in this suit were filed against Mr. Colthurst on the 9th of January this year. On the 10th of January, a month after the commencement of these proceedings, the trustees leased to Mr. Bromfield (Mr. Colthurst's son-in-law, and one of cestui que trusts) this field, among other property. It is to be observed that these trustees make no opposition to the order of the Court, but state in their affidavit that they have leased the property to Mr. Bromfield. On the 16th of May the Court made its order against Mr. Colthurst. On the 17th of May, Mr. Bromfield writes a letter to his bailiff, showing clearly the concert between him and his father-in-law to set the Court at defiance. The monition is served on the 2d of June, and on the 3d of July what I must call a farce is acted by Mr. Colthurst and Mr. Bromfield, who, being in the same house, write letters to each other, evidently for the purpose of being laid before the Court, the father-in-law asking leave to enter the field and remove the bones, the son-in-law refusing him permission. The Court must be blind indeed to be deceived by such devices as these. Moreover it appears that Mr. Bromfield at one time consented to this removal if the costs were not pressed against Mr. Colthurst, and even since the cause was heard a few days ago, Mr. Bromfield has offered to allow a certain portion, but a certain portion only, of the soil and bones to be removed. This he has done, it is said, in consequence of a suggestion from me that I hoped this matter might be arranged out of Court. Apart from these considerations applicable to this particular case, let me now consider the general argument addressed to me by the counsel of Mr. Colthurst, the object of which is to show that this Court has no longer any jurisdiction in this case. This argument, carried to its legitimate extent, was stated by the Court, and frankly admitted by the counsel for Mr. Colthurst at the hearing to amount to this, that if a man illegally removed from the consecrated soil of the churchyard all the bones therein interred, including those which, but a few hours before,

the pious care of the sorrowing survivor may have reverently placed there, and if this man, before the law can be put in motion against him, transfer to his son-in-law, as in this case, or to any purchaser, the land which has received this sacrilegious deposit, then the parishioners have no redress for the wrong which has been inflicted upon them, perhaps by the churchwarden who was solemnly bound to have protected them from it, then the case is without remedy; this Court, in whose custody the law has placed the church and churchyard, is powerless to enforce the law, to redress the wrong, or to punish the wrong-doer. I hope this is not—I do not believe it to be—the doctrine of our law; until better informed, I will not recognise it to be such. I adopt the language of my predecessor in this Court, Dr. Lushington, when it was suggested to him that Mr. Colthurst would, on this ground, refuse obedience to his decree, inasmuch as he could not comply with it. “It was hinted,” Dr. Lushington says in his judgment, which I am now required to enforce, “that by possibility an impediment might be raised because the property is not now Mr. Colthurst’s. I will not believe that the order of the Court will be so contumaciously resisted. Be that as it may, I shall not be alarmed by that intimation.” Nor will I be so alarmed, or be deterred from the endeavour to execute this judgment, by being told that the wrong-doer has, since he has done the wrong, deliberately put it out of his power to redress the wrong.

I am not satisfied that it was competent to Mr. Colthurst to transfer to trustees on behalf of his son-in-law and daughter this consecrated earth and soil. Mr. Colthurst could, I presume, only transfer what was his property; this soil, and these bones, were never his property. But if he could, which I do not believe, he must take the consequence of his act. The Court has ordered him to replace the bones of the parishioners, and the soil, so far as practicable, of the churchyard, into the parish churchyard from which he illegally took them away. He refuses to obey this order. It only remains for me to enforce, to the best of my power, the lawful order of my predecessor, to pronounce Mr. Colthurst in contempt, and to decree the usual process in such cases. I must, however, add, that I have referred to the various dates of the transactions, to the pleadings, to the admissions, to the correspondence in this case; and this Court must be wholly bereft of common sense if it doubted that Mr. Colthurst, and his son-in-law, the lessee of this land on which the bones have been placed, have been concerting measures together in order to evade the execution of the decree of this Court. I have not the least doubt that Mr. Colthurst’s son-in-law would not oppose the wish of Mr. Col-

thrust to replace these bones, if he did not know that no such wish was entertained. Indeed, it is not denied that if the costs had been remitted, the bones would have been replaced. Be this as it may, this Court will protect, as far as it can, the right of parishioners to preserve undeseccrated the bodies of those who have slept in peace in their churchyard. It is incumbent on me, therefore, to grant the prayer of the promoter, and to decree accordingly.

But having discharged my duty in delivering this judgment, I have still two remarks to which I desire to draw the attention of counsel. First, upon the general subject of alterations in churches and churchyards. If a faculty had been applied for, as it ought to have been in this instance, the objections of the parishioners would have been heard, the law would have been explained, the Ordinary would have given proper directions with respect to the decent arrangement of the bones and the earth,—all the expenses of this suit would have been saved, and all the strife in the parish avoided. Secondly, with respect to this particular case (and here I would specially invite the attention of the counsel of Mr. Colthurst), I still think it possible that the necessity of sending Mr. Colthurst to prison for contempt of Court may be avoided. It has occurred to me that if both parties were to consent that the archdeacon or the rural dean should superintend the removal of the earth and bones back into the churchyard, any difficulties respecting the quantum of earth to be replaced, together with the bones, might be avoided; and also, by this intervention of a third person clothed with an official character, all feelings of bitterness between the parties might be removed, and the peace of the parish restored, and in that case the archdeacon or rural dean might certify to the Court generally that, in his opinion, the order of the Court had been sufficiently complied with.

I earnestly press this suggestion upon both parties in this case. If I receive proper intimation that it will be complied with, I will not decree the contumacy and contempt of the defendant to be formally recorded upon the minutes of the Court; and upon receiving the certificate from the archdeacon or rural dean I will dismiss the suit. In the hope that this suggestion may be adopted, I will suspend for six days the formal pronouncing the defendant to have been guilty of contumacy and contempt; but after the lapse of that time, if I receive no such intimation, I shall, without further proceeding in Court of any kind, pronounce the defendant contumacious and in contempt, and signify the same to the High Court of Chancery of England.



THE OFFICE OF THE JUDGE PROMOTED BY

MARTIN v. MACKONCHIE,

AND BY

FLAMANK v. SIMPSON.

*What are Rites and Ceremonies considered—The sources of the Law applicable to them, and the criteria of their lawfulness :—*

- (1.) *It is not lawful to elevate the Cup and Paten during the Celebration of the Holy Communion in a greater degree than is necessary to comply with the Rubric.*
- (2.) *It is not lawful to use incense for censuring persons and things, or to bring in incense at the beginning of or during the Celebration, and to remove it at the end of the Celebration.*
- (3.) *It is not lawful to mix water with the wine during the Celebration.*
- (4.) *It is not lawful to place alms on a stool instead of on the Holy Table.*
- (5.) *It is not unlawful for the Celebrant to kneel during the prayer of Consecration, at least unless the Bishop has in his discretion made an order forbidding it.*
- (6.) *It is lawful to place two lights upon the Holy Table during the Celebration.*

THESE cases were heard together, and I gave one judgment on them on March 28, 1868.

There was no appeal from my judgment on points (1), (2), (3), and (4). On (5) and (6) there was an

appeal, and the Privy Council, reversing my judgment on these points, decided that both matters were unlawful.

The case is reported in the Law Reports, in the Arches Court, 2 Admiralty and Ecclesiastical, p. 116, in the Privy Council, 2 Privy Council Appeals, p. 52.

**JUDGMENT.**—*Preliminary Observations.*—This case of *Martin v. Mackonochie* was brought before my predecessor in this chair, by Letters of Request from the Bishop of London, under the provisions of the 3d and 4th Victoria, c. 86. That Statute, passed in the year 1840, enables any bishop within the Province of Canterbury either to try the case of a clerk for a criminal offence before himself with certain assessors, or to send it to the Court of the Archbishop for trial in the first instance. Since the passing of this Statute, bishops have very generally availed themselves of the latter provision, and this Court has now before it several cases so sent from several suffragan dioceses of the Province of Canterbury.

Under the old law, when these cases were triable in the Consistorial Court of each bishop, if they were sent by Letters of Request to the Court of Arches, these letters contained an averment that the lack of counsel, and difficulty of obtaining proper legal assistance, rendered it expedient, for the ends of justice, that the case should be tried in the first instance in the Court of Appeal, that is, in this Court. It is not to be wondered at, therefore, that this is, I believe, the only case but one which has been sent by Letters of Request from the great Diocese of London, amply furnished as it is with all means and appliances requisite for the administration of justice, to the Court of Appeal; and I much regret that I am deprived of the great assistance which I should have derived from the judgment of the Bishop of London upon the important matters now before me, if the case had been brought to this Court in the regular course of appeal.

The Letters of Request were accepted by Dr. Lushington, my learned predecessor in this chair, and in an early stage of these proceedings, before evidence had been taken, or argument heard upon the merits of the case, I was counsel for the accused clerk, and took objections to the manner in which the offence was charged in the criminal articles. When the Archbishop of Canterbury was pleased to confer upon me the Judgeship of his Grace's Court, I proposed to hear the case, with the assistance of two learned persons well skilled in ecclesiastical law, the Vicar-General of the Archbishop, and

the Chancellor of Rochester (to whom I take this opportunity of publicly expressing my thanks), but this arrangement was demurred to on behalf of the Promoter of the Bishop of London's office, that is the accuser; and I then appointed, as my patent gave me full power to do, those two learned persons to be my surrogates for the hearing of this cause. They held one Court, and in consequence of arguments addressed to them touching the validity of their appointment, they adjourned the hearing of the cause until an opportunity had been afforded for an application to the Temporal Court for a prohibition. The counsel for Mr. Mackonochie applied to the Court of Queen's Bench for a rule *nisi* to show cause why the prohibition should not go to these surrogates, upon the ground that I had exceeded my power in appointing them.

The promoter or accuser did not appear to show cause against the prohibition, and the rule, upon an *ex parte* statement, was perhaps almost necessarily made absolute.

But I think if the rule had been opposed, and the powers given by my patent, and also the fact of the invariable usage of this Court, as proved by its earliest records, to appoint surrogates, been duly brought to the attention of the Court of Queen's Bench, it would have refused the rule. I mention this circumstance, in order to prevent any inconvenience which might ensue from its being supposed that this Court had no power to appoint surrogates. After these proceedings in the Court of Queen's Bench, the surrogates whom I had appointed, by a formal instrument entered upon the records of this Court, resigned the powers which I had conferred upon them.

I then proceeded to hear this cause, and the other, that of *Flamank v. Simpson*, brought before this Court by Letters of Request from the Bishop of Exeter, in which almost the same questions were raised. The arguments in both cases have occupied the attention of the Court for sixteen days. The learning, ability, and industry of the counsel have greatly assisted the Court in the execution of the difficult task which it has to perform, namely, to give judgment upon the charges preferred against Mr. Mackonochie and Mr. Simpson.

A good deal has been said by the counsel on both sides respecting the motives of the accuser and the accused in this suit, but upon this subject the Court need say but very little.

Mr. Martin has been allowed by the Bishop of London to promote his Lordship's office in this case, and I must, of course, presume, that his Lordship was satisfied upon good grounds, both that it was proper that his office should be promoted, and that Mr. Martin was a proper promoter; because

his Lordship, who has the advantage of having a very learned legal adviser, was, no doubt, aware, from the decision of the Queen's Bench in *Regina v. Bishop of Chichester* (2 El. & El. 209), as well as from the decision of the Privy Council in *Sherwood v. Ray* (1 Moore, P.C. Reports, 353), that it was competent to him to exercise his discretion, as to whether his office should be promoted or not. I must, therefore, consider Mr. Martin as having obtained full sanction for the course which he has adopted, and wholly decline to impute to him any unworthy motive whatever for the part which he has taken in this suit. It is, however, a matter of fact, admitted or proved before me, that Mr. Martin is not, legally speaking, a parson of St. Alban's, nor, of course, a churchwarden, a part of whose office it is to represent to the Ordinary any misconduct on the part of the incumbent. This fact, however, if it should prove to be of any importance at all in this case, can only relate to the subordinate question of costs, and in no way affects my judgment upon the principal questions before me.

Upon the other hand, it is only fair to Mr. Mackonochie to state, that it appears from the documents in the cause, that having the cure of souls in one of the worst and most neglected districts of London, and receiving moderate temporal emolument, he has devoted himself to the discharge of his holy office, and evangelising an almost heathen population.

It is hardly necessary to say that he is not on this account entitled to conduct the services of the Church (if he has done so) in a manner not authorised by the law.

There are two modes of procedure in the Ecclesiastical Courts, one of a civil, and the other of a criminal character. There have been, in recent times, two leading judgments delivered upon the lawfulness of certain ornaments (to which word a precise legal meaning has been attached) used during the celebration of Divine worship and certain decorations of churches.

In both these judgments the questions for judicial decision were raised in the civil form of procedure.

The "Stone Altar Case"<sup>1</sup> (as it has been commonly called) arose on an application for a faculty in the Consistory of Ely, and was brought on appeal to this Court.

The causes relating to the Knightsbridge Churches<sup>2</sup> were instituted in a similar way in the Consistory of London, from the decision of which Court an appeal was prosecuted, first to the Court of Arches, and ultimately to the Judicial Committee of the Privy Council, which last tribunal recommended Her

<sup>1</sup> *Faulkner v. Litchfield*, 1 Rob. Eccl. 154.

<sup>2</sup> These cases are afterwards referred to as *Westerton v. Liddell*.

Majesty to reverse, upon many points, the decision of the Courts below. As the Archbishops and the Bishops, who are Privy Councillors, are only members of the Judicial Committee in cases of criminal proceedings against clerks in holy orders, the prelates who did sit on this last occasion sat only as assessors and not as members of the Court.

The proceedings taken in this case are of a criminal character, and the sound of them, so to speak, is harsher than that of those in the cases to which I have referred, but substantially the same end is sought, and the same remedy pursued; and, with an exception to be hereafter stated, I am not prepared to say—inasmuch as not only certain ornaments, but also the use of them in the services of the Church, are complained of—that it would have been competent to the promoters to have brought before me in a civil form all the matters contained in these criminal articles.

They are comprised under the following heads:—

- (1.) The elevation of the Blessed Sacrament of the Lord's Supper, accompanied in Mr. Mackonochie's case by kneeling "or excessive kneeling" at times not prescribed by the Rubrics.
- (2.) The use of incense during the celebration of the Eucharist.
- (3.) The mixing of water with wine at the time of the administration of the Lord's Supper.
- (4.) The use of lighted candles upon the Holy Table.

It will be necessary presently to enter into a fuller and more detailed statement of each of these charges, and of the answers to them. I will only observe that, with one exception, to be noticed hereafter, there is no dispute in the case as to the facts to which the law is to be applied.

### *Statutes of Uniformity.*

The law principally, though not exclusively, relied upon by the counsel for the promoter is contained in the Statutes of Uniformity. I must refer to these Statutes.

The first Statute is that of 2d and 3d Edward vi. c. 1, which accompanied the first Prayer-Book. The second is that of 5th and 6th Edward vi. c. 1, which accompanied the second Prayer-Book, and has been repealed. The third is that of 1st Eliz. c. 2, the penal sections of which are in force.

The additions made to the Prayer-Book by James I. were not accompanied by a separate Statute, but were made under the powers conferred upon the Crown acting with the Metropolitans, under a clause of the Statute of Elizabeth.

Fourthly, the present Statute of Uniformity, the 13th and 14th of Car. II. c. 4, which embodies so much of the Statute of 2d and 3d Edw. VI. c. 1, and of 1st Elizabeth, c. 2, as were necessary for "the establishing and confirming" of the new Prayer-Book.

It is necessary to refer somewhat at length to the Statutes now in force.

The 2d and 3d Edward VI. cap. 1, which is the first Act of Uniformity of Edward VI., begins by reciting that there had been in England "divers forms of common prayer; that is to say, the use of Sarum, of York, of Bangor, of Lincoln, and besides the same now of late, much more divers and sundry forms and fashions have been used in the cathedral and parish churches of England and Wales, as well concerning matins or morning prayer and evensong, as also concerning the Holy Communion, commonly called the Mass, with divers and sundry rites and ceremonies concerning the same, and in the administration of the other sacraments of the Church; and as the doers and executors of the said rites and ceremonies in other form than of late years they have been used were pleased therewith, so others not using the same rites and ceremonies were thereby greatly offended; and, albeit the King's Majesty, with the advice of his most entirely beloved uncle, the Lord Protector, with others of the council, hath heretofore divers times assayed to stay innovations or new rites concerning the premises, yet the same have not had such good success as his Highness required in that behalf; whereupon his Highness, by the most prudent advice, being pleased to bear with the frailty and weakness of his subjects in that behalf, of his great clemency hath not been only content to abstain from punishment of those that have offended in that behalf (for that his Highness taketh that they did it of a good zeal), but also to the intent that uniform quiet and godly order shall be had concerning the premises, appointed the Archbishop of Canterbury and certain of the most learned and discreet bishops and other learned men, to consider and ponder the premises, and thereupon having as well eye and respect to the most sincere and pure Christian religion taught by the Scriptures as to usages in the Primitive Church, should draw and make one convenient, meet order, rite, and fashion of common and open prayer, and administration of the sacraments, to be had and used in his Majesty's realm of England and Wales, the which at this time, by the aid of the Holy Ghost, with one uniform agreement is of them concluded, set forth, and delivered to his Highness, to his great comfort and quietness of mind, in a book entitled, 'The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the

Church, after the use of the Church of England:’ Wherefore the Lords spiritual and temporal, and the Commons, in this present Parliament assembled, considering as well the most godly travel of the King’s Highness, of the Lord Protector, and of other his Highness’ council, in gathering and collecting the said Archbishop, Bishops, and learned men together, as the godly prayers, orders, rites, and ceremonies in the said book mentioned, and the considerations of altering those things which he altered, and retaining those things which he retained in the said book, but also to the honour of God, and the great quietness which by the grace of God shall ensue upon the one and uniform rite and order in such common prayer, and rites and external ceremonies, to be used throughout England and in Wales, at Calice, and the marches of the same, do give to his Highness most hearty and lowly thanks for the same.” Then it goes on and says, “That all and singular ministers in any cathedral or parish church shall be bounden to say and use matins, evensong, celebration of the Lord’s Supper, commonly called the Mass, and administration of each of the sacraments and all their common and open prayer, in such order and form as is mentioned in this book, and none other or otherwise.”

It then enacts, “That if any manner of parson, vicar, or other whatsoever minister that ought or should sing or say the common prayer mentioned in the said book, or minister the sacraments, shall refuse to use the said common prayer or to minister the sacraments in such cathedral or parish church, in such order and form as they be mentioned and set forth in the said book, or shall use, wilfully and obstinately standing in the same, any other rite or ceremony, order, form, or manner of mass openly or privily, or matins, evensong, or other open prayer, than as mentioned and set forth in the said book,” he then becomes liable to certain penalties.

The seventh section of this Act states, “That it shall be lawful for all men, as well in churches, chapels, oratories, or other places, to use openly any psalms or prayer taken out of the Bible at any due time, not letting or omitting thereby the service or any part thereof mentioned in the said book.”

The eighth section of this Act provides, “That the books concerning the said services shall, at the costs and charges of the parishioners of every parish and cathedral church, be attained and gotten before the Feast of Pentecost next following, or before; and that all such parishes and cathedral churches, or other places where the said books shall be attained and gotten before the said Feast of Pentecost, shall, within three weeks next after the said books so attained and gotten, use the said service, and put the same in use according to this Act.”

The present Act of Uniformity, passed in the year 1662, the 13th and 14th Car. II. c. 4, is entitled "An Act for the Uniformity of public Prayers, and Administration of Sacraments, and other Rites and Ceremonies; and for establishing the form of making, ordaining, and consecrating Bishops, Priests, and Deacons in the Church of England."

The first section gives the following title to our present Prayer-Book:—"The Book of Common Prayer and administration of the Sacraments, and other rites and ceremonies of the Church, according to the use of the Church of England; together with the psalter or psalms of David, pointed as they are to be sung or said in Churches; and the form and manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons."

The second section, after reciting "that nothing conduceth more to the settling of the peace of the nation, nor to the honour of our religion and the propagation thereof, than a universal agreement in the worship of Almighty God, and to the intent that every person in this realm may certainly know the rule to which he is to conform in public worship and administration of sacraments, and other rites and ceremonies of the Church of England," enacts, "that all ministers shall be bound to say and use the morning prayer, evening prayer, and celebration and administration of both sacraments, and all other the public and common prayer, in such order and form as is mentioned in the book annexed and joined to the present Act, intituled the Book of Common Prayer, and administration of the Sacraments, and other rites and ceremonies of the Church, according to the use of the Church of England."

By the 17th section it is further enacted, "by the authority aforesaid, that no form or order of common prayers, administration of sacraments, rites, or ceremonies, shall be openly used in any church, chapel, or other public place, or in any college or hall in either of the Universities, the colleges of Westminster, Winchester, or Eton, or any of them, other than what is prescribed and appointed to be used in and by the said book."

And by the 24th section it is further enacted, "by the authority aforesaid, that the several good laws and statutes of this realm, which have been formerly made, and are now in force, for the uniformity of prayer and administration of the sacraments within this realm of England and places aforesaid, shall stand in full force and strength, to all intents and purposes whatsoever, for the establishing and confirming of the said book" (intituled as aforesaid) "herein before mentioned to be joined and annexed to this Act, and shall be applied, practised, and put in use for the punishing of all offences con-



trary to the said laws, with relation to the book aforesaid, and no other."

By the Statute 1st Elizabeth, cap. 2, sec. 27, it is enacted, "that all laws, statutes, and ordinances wherein or whereby any other service, administration of sacraments, or common prayer is limited, established, or set forth to be used within this realm, or any other the Queen's dominions or countries, shall from henceforth be utterly void and of none effect."

The main proposition upon which the alleged unlawfulness of all the matters contained in the criminal articles has been rested by the counsel for the promoter is, that they are all, in effect, rites and ceremonies other than and additional to those which are prescribed in the Prayer-Book and the Act of Uniformity.

The answer to this charge is twofold: first, it is averred that the matters complained of are not rites or ceremonies; secondly, that if they fall within either category they are not "other than or additional to" those prescribed in the Book of Common Prayer, in the sense of being at variance with or repugnant to them, forasmuch as they are in accordance with and subsidiary to them.

Under the first position they maintain that the terms "rites and ceremonies" mean an entire service, such as Masses for the Dead, or services for particular festivals; or customs, such as creeping to the Cross, and the like, which were abolished at the time of the Reformation.

That the elevation of the Blessed Sacrament, excessive kneeling, the use of incense, the mixing water with the wine, the lighting of candles, are elements or ingredients of a rite or ceremony, and not a rite or ceremony *per se*.

The terms rite and ceremony, as used in the first Prayer-Book, and from thence imported into our present Prayer-Book, are terms, so to speak, of ecclesiastical and ritual art, and must be construed with reference to their use in contemporaneous and other works of writers upon ritual, unless they receive a different meaning from a comparison of other passages or parts in the Prayer-Book or Statute in which they are found.

I must, therefore, refer at length to the preface in our Prayer-Book, entitled,—

"Of Ceremonies, why some be abolished, and some retained.

"Of such ceremonies as be used in the Church, and have had their beginning by the institution of man, some at the first were of godly intent and purpose devised, and yet at length turned to vanity and superstition; some entered into the Church by undiscreeet devotion, and such a zeal as was

without knowledge; and for because they were winked at in the beginning, they grew daily to more and more abuses, which not only for their unprofitableness, but also because they have much blinded the people, and obscured the glory of God, are worthy to be cut away, and clean rejected: other there be, which although they have been devised by man, yet it is thought good to reserve them still, as well for a decent order in the Church (for the which they were first devised), as because they pertain to edification, whereunto all things done in the Church (as the Apostle teacheth) ought to be referred.

“And although the keeping or omitting of a ceremony, in itself considered, is but a small thing; yet the wilful and contemptuous transgression and breaking of a common order and discipline is no small offence before God, *Let all things be done among you, saith Saint Paul, in a seemly and due order*: the appointment of the which order pertaineth not to private men; therefore no man ought to take in hand, nor presume to appoint or alter any publick or common order in Christ’s Church, except he be lawfully called and authorised thereunto.

“And whereas in this our time, the minds of men are so diverse, that some think it a great matter of conscience to depart from a piece of the least of their ceremonies, they be so addicted to their old customs; and again on the other side, some be so new-fangled, that they would innovate all things; and so despise the old, that nothing can like them, but that is new; it was thought expedient, not so much to have respect how to please and satisfy either of these parties, as how to please God, and profit them both. And yet lest any man should be offended, whom good reason might satisfy, here be certain causes rendered, why some of the accustomed ceremonies be put away, and some retained and kept still.

“Some are put away, because the great excess and multitude of them hath so increased in these latter days, that the burden of them was intolerable; whereof Saint Augustine in his time complained, that they were grown to such a number, that the estate of Christian people was in worse case concerning that matter, than were the Jews. And he counselled that such yoke and burden should be taken away, as time would serve quietly to do it. But what would Saint Augustine have said, if he had seen the ceremonies of late days used among us; whereunto the multitude used in his time was not to be compared? This our excessive multitude of ceremonies was so great, and many of them so dark, that they did more confound and darken, than declare and set forth Christ’s benefits unto us. And besides this, Christ’s Gospel is not a ceremonial law (as much of Moses’ law was), but it is a religion to serve God, not

in bondage of the figure or shadow, but in the freedom of the spirit; being content only with those ceremonies which do serve to a decent order and godly discipline, and such as be apt to stir up the dull mind of man to the remembrance of his duty to God, by some notable and special signification, whereby he might be edified. Furthermore, the most weighty cause of the abolishment of certain ceremonies was, that they were so far abused, partly by the superstitious blindness of the rude and unlearned, and partly by the unsatiable avarice of such as sought more their own lucre, than the glory of God, that the abuses could not well be taken away, the thing remaining still.

“But now as concerning those persons, which peradventure will be offended, for that some of the old ceremonies are retained still: If they consider that without some ceremonies it is not possible to keep any order, or quiet discipline in the Church, they shall easily perceive just cause to reform their judgments. And if they think much, that any of the old do remain, and would rather have all devised anew: then such men granting some ceremonies convenient to be had, surely where the old may be well used, there they cannot reasonably reprove the old only for their age, without bewraying of their own folly. For in such a case they ought rather to have reverence unto them for their antiquity, if they will declare themselves to be more studious of unity and concord, than of innovations and new-fangleness, which (as much as may be with true setting forth of Christ's religion) is always to be eschewed. Furthermore, such shall have no just cause with the ceremonies reserved to be offended. For as those be taken away which were most abused, and did burden men's consciences without any cause: so the other that remain, are retained for a discipline and order, which (upon just causes) may be altered and changed, and therefore are not to be esteemed equal with God's law. And moreover, they be neither dark nor dumb ceremonies, but are so set forth, that every man may understand what they do mean, and to what use they do serve. So that it is not like that they in time to come should be abused as other have been. And in these our doings we condemn no other nations, nor prescribe anything but to our own people only: for we think it convenient that every country should use such ceremonies as they shall think best to the setting forth of God's honour and glory, and to the reducing of the people to a most perfect and godly living, without error or superstition; and that they should put away other things, which from time to time they perceive to be most abused, as in men's ordinances it often chanceth diversely in divers countries.”

Perhaps it would be difficult to deduce from this language

any certain conclusion as to the precise sense in which the terms Rites and Ceremonies are used.

In the first Prayer-Book, at the close of the dissertation, which is at the end of the services, "Of Ceremonies, why some be abolished, and some retained," are "certain notes for the more explication and decent ministration of things contained in this book," one "note" is "as touching kneeling, crossing, holding up of hands, knocking upon the breast, and other gestures, they may be used or left as every man's devotion serveth without blame."

This note does not appear in the subsequent Prayer-Books, but, nevertheless, at the Hampton Court conference in the year 1603, the Bishop of Winchester, replying to the objections made by the Puritans to the use of the Cross in baptism and ceremonies generally, said—

"In prayer, the kneeling on the ground, the lifting up of our hands, the knocking of our breasts, are ceremonies significant: the first, of our humility coming before the mighty God; the second, of our confidence and hope; the other, of our sorrow and detestation of our sins; and these are and may lawfully be used."

"M. Dean of the Chapel remembered the practice of the Jews, who, unto the institution of the Passeeover, prescribed unto them by Moses, had, as the rabbins witnesse, added both signes and words, eating soure herbs, and drinking wine, with these words to both, 'Take, and eat these in remembrance,' etc.; 'Drink this in remembrance,' etc. Upon which addition and tradition of theirs, our Saviour instituted the Sacrament of his last Supper, in celebrating it with the same words and after the same manner; thereby approving that fact of theirs in particular, and generally, that a Church may institute and retain a signe significant," which, says the reporter of the conference, satisfied His Majesty exceeding well.—(*Cardwell, Conferences on the Book of Common Prayer*, 3d ed. p. 197.)

These gestures appear to me to have been considered as ceremonies, wisely left to every man's discretion.

In the first "order of the Communion" which preceded the first Prayer-Book, the Rubric says, "The time of the Communion shall be immediately after that the Priest himself hath received the Sacrament, without the varying of any other *rite* or *ceremony* in the Mass (until other order shall be provided), but, as heretofore, usually the Priest has done with the Sacrament of the Body," etc.

Here, again, rite and ceremony seem to be used for elements or portions of a service.

Let us consider the construction put upon the Latin terms

(from which, of course, the English terms are borrowed) *ritus* et *cæremoniæ* by high Latin authorities.

Bona (*Opera Omnia*, p. 562), writing, *De Disciplina psallendi*, § iii., says :

“ *Cæremoniæ quid sint, et quæ hujus nominis origo. Earum efficacia, et utilitas ad divinum cultum. Veræ a falsis, et superstitiosis discernendæ. Exteriores cæremonias sine interno spiritu parum prodesse.* ”

“ . . . Sunt autem cæremoniæ, si proprie loqui velimus, ritus sancti in sacrificiis, et divinis officiis ad Dei cultum adhibiti : sed migravit vocabulum in usus etiam profanos ; nam cum homines instituissent sibi invicem inclinare, genua flectere, manus osculari : hæ et aliæ honoris exhibitiones, cum proprio nomine carerent, cœptæ sunt etiam cæremoniæ dici.”

Van Espen (*Jus Eccles. Universum*, tom. i. p. 410, pars ii. tit. v. cap. 1, sect. 9, *de celebratione Missarum*) speaking of the celebration of the Eucharist, says : “ Certum tamen est ipsum apostolis suis, totique Ecclesiæ, in eorum persona, potestatem auctoritatemque dedisse ea omnia in augustissimi hujus mysterii *ritibus* seu *cæremoniis* addendi, demendi, immutandi quæ illius dignitati et populorum devotioni pro temporum et locorum diversitate magis congruere judicarent.”

Here, *ritus* and *cæremoniæ* are not separate services, but certain ingredients or accompaniments of one service, that of the Eucharist.

Gavanto (vol. i. p. 3, ed. 1823, Venice), a great Roman ritualist, says, that Bona and Suarez both define *cæremonia* as “ *actio religiosa ad cultum et decentiam sacrificii ab ecclesiâ instituta.* ”

He quotes Quarti's opinion as follows :—

“ *Procedit Quarti ad dividendas cæremonias in eas, quæ sunt intrinsecæ ipsi missæ, et partes ejusdem, et consistunt, dicit ipse, tum in verbis, tum in gestibus celebrantis, de quibus late Suarez, disp. 83 et 84, et in eas, quæ sunt circumstantiæ extrinsecæ ejusdem sacrificii, ut locus, tempus, vasa, et vestimenta sacra, etc. Dicit præterea, quod illæ cæremoniæ, quæ consistunt in gestibus, quædam inductæ sunt propter decentiam operandi, nec habent aliam significationem, ex. gr. quod sacerdos dum signat seipsum, ponit sinistram sub pectore ; et aliæ inductæ sunt propter significationem moralem, vel mysticam, verb. grat. mixtio aquæ cum vino* ” (observe these words), “ *digitorum ablutio, crucis signa, de quibus Divus Thomas 3 part. quæst. 83, artic. 4, § 5.* ”

“ Verum, pace tanti viri, ego distinguerem cæremoniam sacram a ritu, dicendo, ritus sacros consistere in illis precibus, epistola, evangelio, etc., quæ juxta ecclesiæ dispositionem recitari debent in missa ; cæremoniam autem consistere in solis gestibus, quibus

prædictæ preces juxta ejusdem ecclesiæ præscriptum peragi debent ad majorem ornatum, et decentiam sacrificii, quod celebratur; et revera Cæremonialia, seu libros cæremoniarum vocamus illos, qui non orationes et preces dicendas præscribunt, sed modum, quo illæ dicendæ sunt; e contra Rituales nuncupamus illos, qui continent preces, seu alias orationes, quas recitandas præscribunt.

“Ritus, quoniam in verbis regulariter consistunt, vel sunt partes missæ ordinariæ, quia scilicet semper ingrediuntur ejus compositionem; vel sunt extraordinariæ, sive mobiles, quia non semper ejus compositionem ingrediuntur, sed ad majorem quandoque adduntur solemnitatem, atque ornatum.”—(*Gavanto, Thesaurus Sacrorum Rituum*, vol. i. p. 4, pars i., in *Rubrica Generali*.)

The Council of Trent, in the 22d session, the 5th chapter (edit. Coleti, tom. xx. p. 130), *De Missæ Cæremoniis et Ritibus*, speaks as follows:—

“Quumque natura hominum ea sit, ut non facile queat sine adminiculis exterioribus ad rerum divinarum meditationem sustolli, propterea pia mater ecclesia ritus quosdam ut scilicet quædam submissa voce alia vero elatiore in missa pronunciantur, instituit, cæremonias item adhibuit; ut” (these are the instances of ceremonies) “mysticas benedictiones, *lumina*, *thymiamata*, vestes, aliæque id genus multa ex apostolica disciplina et traditione, quo et majestas tanti sacrificii commendaretur, et mentes fidelium per hæc visibilia religionis et pietatis signa ad rerum altissimarum, quæ in hoc sacrificio latent, contemplationem excitarentur.”

Whatever authority this passage may have, it would appear to include under the title *Cæremoniæ*, among other things, the use of lights, of incense, and of vestments.

There is no doubt that the terms Rites and Ceremonies are sometimes used in the sense contended for by the defendants; but on the whole, the result of this examination of authorities leads me to the conclusion that there is a legal distinction between a Rite and a Ceremony; the former consisting in services expressed in words, the latter in gestures or acts preceding, accompanying, or following the utterance of these words.

Applying this principle to the charges before me, I am of opinion that the matters complained of must be considered in law as ceremonies.

Before I proceed to consider the greater question, whether they are ceremonies forbidden by the ecclesiastical law of England, and more especially by that part of it which consists of the provisions of the Prayer-Book and the Statute of Unifor-

mity, I think it right to draw attention to the judgment of the Church Universal, and especially of "that pure and apostolical branch of it established in this realm" upon the general subject of ceremonies.

And from that judgment it will, I think, appear that an essential distinction is drawn between those which are from their origin immutable, and those which it is competent to the proper authorities to mould according to the varying necessities and exigencies of each particular Church.

The only orders given in the New Testament with respect to the ritual of the Church are of the most general kind, and are to be found in the following passages: Saint Paul in his First Epistle to the Corinthians directs,

*πάντα πρὸς οἰκοδομὴν γενέσθω,*

and again,

*πάντα εὐσχημόνως καὶ κατὰ τάξιν γενέσθω,*

which we render,

"Let all things be done to edification,"

and

"Let all things be done decently and in order."

Saint Augustine, whose authority our Church so highly regards, observes (Ep. 36, tom. ii. p. 101), "In his rebus de quibus nihil certi statuit Scriptura Divina, mos populi Dei vel instituta majorum pro lege tenenda sunt."

And St. Jerome, to whom our articles refer, says (Ep. xxviii. ad Lucinium Bæticum), "Ego illud te breviter admonendum puto traditiones ecclesiasticas præsertim" (remark the caution) "quæ fidei non officiant ita observandas ut a majoribus traditæ sunt: nec aliorum consuetudinem aliorum contrario more subverti. Sed unaquæque provincia abundet in suo sensu, et præcepta majorum leges apostolicos arbitretur."

When Augustine, the missionary of Gregory the Great (to whom this country is so much indebted), found the ancient British Churches in possession of a ritual in accordance with the Gallican use and that of the Eastern Church, he became perplexed what course to pursue, and wrote for advice on the subject to the Pope. From our old historian Bede we learn how wise an answer he received:—

(Beda, *Hist.* i. 27, § 60, Secunda Interrogatio Augustini, edit. Stephenson, p. 89.) "Cum una sit fides," wrote Augustine, "sunt ecclesiarum diversæ consuetudines, et altera consuetudo missarum in sancta Romana ecclesia, atque altera in Galliarum tenetur? Respondit Gregorius Papa. Novit fraternitas tua Romanæ ecclesiæ consuetudinem, in qua se meminit nutritam.

Sed mihi placet, sive in Romana, sive in Galliarum, seu in qualibet ecclesia aliquid invenisti quod plus Omnipotenti Deo possit placere, sollicite eligas, et in Anglorum ecclesia, quæ adhuc ad fidem nova est, institutione præcipua, quæ de multis ecclesiis colligere potuisti, infundas. Non enim pro locis res, sed pro bonis rebus loca amanda sunt. Ex singulis ergo quibusque ecclesiis, quæ pia, quæ religiosa, quæ recta sunt elige, et hæc, quasi in fasciculum collecta, apud Anglorum mentes in consuetudinem depone.”

According to a later historian of our Church, the learned Field, Dean of Gloucester :—

“Ceremonies are outward acts of religion, having institution, either from the instinct of nature, as the lifting up of the hands and eyes to heaven, the bowing of the knee, the striking of the breast, and such like; or immediately from God, as the sacraments; or from the Church’s prescription: and either only serve to express such spiritual and heavenly affections, dispositions, motions, and desires as are or should be in men; or else to signify, assure, and convey unto them such benefits of saving grace as God in Christ is pleased to bestow on them. To the former purpose and end the Church hath power to ordain ceremonies; to the later, God only.”—(*Field, Of the Church*, vol. ii. p. 527.)

And Burnet in his *History of the Reformation* (ed. Oxford, 1829, vol. ii. p. 164), expressing himself with greater accuracy than usual, in speaking of the use of a ceremony in relation to the belief of the Church, says, “This seems more necessary to be well explained, by reason of the scruples that many have since raised against significant ceremonies, as if it were too great a presumption in any Church to appoint such, since these seem to be of the nature of sacraments. Ceremonies that signify the conveyance of a Divine grace and virtue are indeed sacraments, and ought not to be used without an express institution in Scripture; but ceremonies that only signify the sense we have, which is sometimes expressed as significantly in dumb shows as in words, are of another kind; and it is as much within the power of the Church to appoint such to be used, as it is to order collects and prayers, words and signs being but different ways of expressing our thoughts.”

The language of our Church in her articles on this subject is expressed as follows: In Article XX.—

“Of the Authority of the Church.

“The Church hath power to decree rites and ceremonies, and authority in controversies of faith: And yet it is not lawful for the Church to ordain anything that is contrary to God’s



Word written, neither may it so expound one place of Scripture, that it be repugnant to another. Wherefore, although the Church be a witness and a keeper of Holy Writ, yet, as it ought not to decree anything against the same, so besides the same ought it not to enforce anything to be believed for necessity of salvation."

And in Article XXXIV.—

"Of the Traditions of the Church.

"It is not necessary that traditions and ceremonies be in all places one and utterly like, for at all times they have been divers, and may be changed according to the diversities of countries, times, and men's manners, so that nothing be ordained against God's Word. Whosoever through his private judgment, willingly and purposely, doth openly break the traditions and ceremonies of the Church, which be not repugnant to the Word of God, and be ordained and approved by common authority, ought to be rebuked openly (that others may fear to do the like), as he that offendeth against the common order of the Church, and hurteth the authority of the magistrate, and woundeth the consciences of the weak brethren.

"Every particular or national Church hath authority to ordain, change, and abolish ceremonies or rites of the Church ordained only by man's authority, so that all things be done to edifying."

Bishop Beveridge (few higher authorities could be invoked) in his "*Ecclesia Anglicana Ecclesia Catholica, or the Doctrine of the Church of England consonant to Scripture, Reason, and the Fathers, in a Discourse upon the Thirty-nine Articles*" (*Works*, Oxford edition, 1845, vol. vii. p. 373), thus comments Article XX., "Of the Authority of the Church:—"

"First (he says) it hath power to decree rites and ceremonies, so that it is lawful for the Church to decree and appoint what rites or ceremonies shall be used in the public worship of the great God; not as parts of that worship, for then they would not be rites and ceremonies. And therefore it is in vain objected to by the adversaries to this truth, that herein we give the Church power to add anything to God's worship which is not commanded in his Word; as if rites and ceremonies were in themselves any part of worship. Whereas what is any part of God's worship cannot be a mere rite or ceremony, neither can that which is a mere rite or ceremony be any part of his worship. For rites and ceremonies, in that they are nothing but rites and ceremonies, be in themselves indifferent, neither good nor bad, until determined by the Church; after which determination also they still remain

indifferent in themselves, and are good and bad only in reference to their decree, who had power and authority to determine them. Whereas every the least part of God's worship can be by no means omitted without sin, and therefore when it is here said that the Church hath power to decree rites and ceremonies, we must always by the words rites and ceremonies understand nothing else but the particular circumstances and customs to be observed in the service and worship of God, not as any cause or part thereof."

Again the Bishop says (p. 375)—

"We must needs grant that the Church of Corinth (and so other Churches) had power and authority to determine and order these things. Or, if they had no such power before, yet St. Paul, or rather the Most High God by St. Paul, did in these words grant them such a power and authority, in the decreeing these and the like circumstances and ceremonies for the more decent and orderly worshipping of the Glorious Jehovah, giving them this one general comprehensive rule, 'Let all things be done to edifying, and in order;' out of which one general rule, that, and all Churches whatsoever, according to the variety of times and places they live in, were to frame other particular rules and canons for the edifying and orderly performance of God's worship; who being a God, not of confusion, but of order in himself, he requires such worship as is done in order, not in confusion, from us."

(P. 377)—

"Neither can I see in reason how this power in ceremonies and controversies should be denied the Church. For first, as for ceremonies, they cannot but be acknowledged to be indifferent, neither in themselves good nor bad; and if they be in themselves either good or bad, and not indifferent, they are not merely ceremonies, especially if they be in their own nature bad and sinful, they are not the ceremonies intended in this place. For this same Article, in the following part of it, doth determine that the ceremonies here intended are only such as are not against the Scripture, and by consequence not unlawful. Now such rites and ceremonies as are in themselves indifferent, it can be no sin to determine them to either part; for which part soever, they are determined to, they cannot be determined into sin. I mean, what is in itself indifferent, and so may be used or not used without sin, whether it be decreed to be used, or not to be used, it cannot be any sinful decree, especially when, after as well as before the decree, they are still acknowledged to be in themselves indifferent,

though not as to our use. Which things of indifferency also, as all ceremonies are, cannot be supposed to come within the command of God, for then they would not be indifferent; and seeing God hath not left any particular command, but only a general rule about all things of indifferency, that they be so ordered that they be done decently and to edifying, the Church cannot be thought to sin in determining them, so as she thinks the most edifying and decent, as we shall by the blessing of God see more fully in the Thirty-fourth Article. And if it be no sin thus for the Church to determine ceremonies, it must needs be granted that she hath power to decree them."

And on Article XXXIV., "Of the Traditions of the Church," the Bishop observes (p. 526)—

"But there being many circumstances required to the performance as well of religious as civil actions, and so to the worship of God as well as anything else, as, for example, the time when, the place where, the habit in which His public service shall be performed, and the like, it being impossible it should be performed without these, and the like circumstances, and seeing the all-wise God hath thought good not to determine these in His Word, but to leave it to the discretion of the Church to determine them as it shall see fit, only giving them this general rule to square all these their determinations by—

'Let all things be done decently and in order.'

Hence it is that every particular Church hath still thought fit to exercise this her power and authority in determining these circumstances, according to that manner as seemeth to herself orderly and devout, so that there is no necessity that one Church should determine them after the same manner that another doth; nay, it is often necessary that one Church should not follow another in this case; for it often so falls out that what is decent in one place is unseemly in another, and every Church is bound to model circumstances according to that order which is the most seemly and decent in the place where it is settled.

(P. 536)—

"And if we should descend down to after councils, we shall find there was scarce ever a Provincial Church met together in council since our Saviour's time but did not ordain some ceremonies or other to be observed by her children. It would be an endless thing to reckon up all the ceremonies that were ordained or altered by Provincial Churches; or, indeed, all the Provincial Churches that ordained or altered ceremonies in the primitive times. I shall, therefore, instance only in such cere-

monies as our Church hath thought good still to retain, that so we may see both how Provincial Churches have still looked upon themselves in all ages to have power to ordain ceremonies, and also, that the ceremonies retained and ordered by our Church are no new-fangled ceremonies, nor Popish superstitions, but that most of them were ordained and used in the Primitive Church before the Pope had forged his superstitions."

This very learned Prelate then recites a great number of instances in which the Provincial Councils of different countries have made ordinances with respect to their own ritual observances, and adds (p. 540), "And thus we see how many, even of the very rites and ceremonies which are still in use amongst us, were long ago ordained by Provincial Churches met together in council. Many more might I heap up to the same purpose, but these may be enough to show how the Provincial or National Churches of Christ, in all ages, since His Incarnation, have still exercised this power in ordaining, altering, and abolishing ceremonies, which certainly they would never have done if they had not believed they had power to do it."

Bishop Jeremy Taylor (vol. xiv., Heber's edition), in his "Rule of Conscience" (p. 21), lays down as Rule XII., *All those Rituals which were taught to the Church by the Apostles concerning Ministries, which were of Divine institution, do oblige all Christendom to their observation.*

And on this rule he observes:—

"(1.) I instance in the Holy Sacrament first of all; concerning which the Apostles delivered to the Churches the essential manner of celebration, that is, the way of doing it according to Christ's commandment, for the words themselves, being large and indefinite, were spoken indeed only to the Apostles, but yet they were representatives of all the whole ecclesiastical order in some things, and of the whole Christian Church in other; and, therefore, what parts of duty, and power, and office did belong to each, the Apostles must teach the Church, or she could have no way of knowing without particular revelation.

"(2.) Thus the Apostles taught the Bishops and Priests to consecrate the symbols of bread and wine before they did communicate; not only because by Christ's example we were taught to give thanks before we eat, but because the Apostles knew that the symbols were consecrated to a mystery. And this was done from the beginning, and in all Churches, and in all ages of the Church; by which we can conclude firmly in this rule, that the Apostles did give a canon or rule to the Churches to be observed always, and that the Church did never believe she had authority or reason to recede from it. For in those rites which are ministries of grace, no man must inter-

pose anything that can alter any part of the institution, or make a change or variety in that which is of Divine appointment. For the effect in these things depends wholly upon the will of God, and we have nothing to discourse or argue; for we know nothing but the institution, nothing of the reason of the thing, and therefore we must in these cases, with simplicity and obedience, apply ourselves to practise as we have received, for we have nothing else to guide us. Memory and obedience, not discourse and argument, are here in season."

The Bishop then proceeds to distinguish between alterable and unalterable rites as follows (p. 22):—

"But where the Apostles did not interpose, there the Churches have their liberty; and in those things, also, which evidently were no part of the appointed liturgy or ministration, in those things, though it be certain the Apostles did give rules of order and decency, yet because order is as variable as the tactics of an army, and decency is a relative term, and hath a transient and changeable sense, in all these things there is no prescription to the Church, though we did know what the Churches apostolical did practise, for they did it with liberty, and, therefore, we are not bound; the Churches are as free as ever; though the single persons in the Churches can be bound, yet the Churches always have liberty."<sup>1</sup>

<sup>1</sup> The Bishop continues (p. 109) thus:—

"This rule is to be understood positively and affirmatively, that is, the Church in all her constitutions must take care that the Church be edified and built up in some grace or other; but not so, that whatsoever is for edification, she hath power to command. The measures and limits of her legislative power I have already described; it must be within those circles; and though other things without them may be useful and fit for instruction, or to promote the interest of a virtue, yet Christ hath left them at liberty, and His Church hath no power to bind beyond His commission. They can exhort and persuade, and, by consent, they can prescribe, but to the making of a law there is something else required besides that it be apt to edify or to instruct. For (besides that it must be of something placed in her power) it must edify, and not destroy; it must build up, and not pull down; that is, it must build with all hands, and not pull down with one.

"I instance in the institution of significant ceremonies, that is, such which are not matters of order and decency, but merely for signification and the representment of some truth or mystery. Those which are prudently chosen are in their own nature apt to instruct. Thus, the use of pictures in the Greek and in the Lutheran Churches is so far useful, that it can convey a story, and a great and a good example to the people that come thither, and so far they may be for edification. But because these can also, and do too often, degenerate into abuse, and invade religion, to make a law of these is not safe; and when that law does prevail to any evil that is not easily by any other means cured, it does not prevail upon the conscience, and, indeed, to make a law for the use of them, is not directly within the commission of the ecclesiastical power."

Luther in the "Formula Missæ et Communions" for the Church of Wittenberg, which appears to have been written in 1523, speaking of the ceremonies of Divine worship which he recommends, says:—

"Sexto, requiritur Evangelii lectio. Ubi nec candelas neque thurificationem prohibemus, sed nec exigimus, esto hoc liberum."<sup>1</sup>

The same spirit of true liberality is exemplified in the writings of the late most distinguished American Prelate, the Bishop of Vermont. Speaking of ornaments used in the services of the Church, he observes:—

"The same liberty exists with regard to lights upon or behind the altar, the use of chrism and incense, the mixing of water with the wine of the Holy Eucharist, and the representation of figures and emblems in stained glass windows; for all of these were established by usage in the second year of Edward VI., and our Church has uttered no *prohibition* concerning any of them, but has merely *omitted* to notice them, directly or indirectly, in her whole legislation. It is certain that none of these things interfere with our liturgy, because they may be used without deviating in the slightest degree from our prescribed forms.

"And the plain result would seem to be, that their introduction, whether expedient or not, can never be justly considered unlawful."—(*Law of Ritualism*, by Bishop of Vermont, p. 84.)

Great variety of usage is to be found in the Greek, the Roman, the Gallican, and the English Churches upon this subject. All persons moderately acquainted with Ecclesiastical history are aware with what zeal and tenacity the Church of Milan<sup>2</sup> has clung to its Ambrosian rite;—of the various

<sup>1</sup> The note of the learned editor, Daniel, in his edition of the Codex Liturgicus (Leipsic, 1848), on this, is:—

"Sunt quibus thuris odor tam luculentum sit documentum Romanismi, ut, si naribus ducant bonos odores thymiatum, statim clament, se odorari ecclesiam Romano-Catholicam. Vident, thuris oblationem Luthero esse ἀδιάφορον. Hoc tamen certum est, thurificationis vestigia in ecclesia Lutheri exstare vestigia fere nulla (cf. p. 24.) In hac urbe nostra Halensi sæpius vidi in ecclesiis tribus majoribus, si summæ celebrabantur festivitates, pueros, cum acerris fumigantibus ecclesiæ navim percurrentes: sed hæc cærimonia magis ad εὐωδίαν quandam respicere videtur, quam ad cultum divinum."

<sup>2</sup> The writer, speaking of the reforms of the Roman Liturgy about the time of and after the Council of Trent, ascribes the preservation of the Use of Milan to the energy of the great Archbishop San Carlo Borromeo:—

"Or dirò di quanto ha fatto S. Carlo per la difesa e per la ristorazione dei riti e delle ceremonie Ambrosiane. Se un uomo di debole tempra avesse a quei tempi tenuta la seda Arcivescovile di Milano, l'antichissima nostra liturgia, espressione e conservazione di più riti primitivi, era forse per subire quelle sorti, che toccarono, già son più secoli, alla gallicana poi alla mozarabica.

Ora non è più a temersi alcun pericolo per la continuità del rito Ambrosiano

liturgies of the Greek Church, and the different uses in England which, though much reconciled by the famous use of Sarum, were ultimately merged in our present Prayer-Book.

I will close my citations on this subject with one from the great Roman Ritualist, Bona:—

“Quarto tanquam verissimum, et apud omnes indubitatum habendum est id quod sæpius in hoc libro repetendum fuit, quædam esse in ecclesia, quæ ad fidem ut dogmata, quædam quæ ad ritus ut mores pertinent. Quæ fidei sunt, sancta inviolabilia, immutabilia semper, et ubique manent; Deumque solum auctorem agnoscunt. Ad ea credenda cæco quodam obsequio captivum ducimus intellectum; ut si quis ea turbare, vel quovis modo immutare aut iis contradicere ausus fuerit, diro anathemate percussus extra ecclesiam fit, nec locum deinceps habet inter Orthodoxos. Ritus et ea quæ morum ac disciplinæ sunt ab hominum arbitrio pendent, et cum tempore variantur, rerumque statu immutato veteres consuetudines abrogantur, et novæ succedunt, illæsa fidei unitate.”—(*Bonæ Opera Omnia*, “*Rerum Liturgicarum*,” Lib. i. cap. xxiii. p. 265.)

“Moribus autem immutatis sacros quoque ritus variari consequens fuit.”

“Distinguendæ igitur ætates disquirenda mutationis ratio et omnia ad sua principia revocanda sunt ut certa rerum notitia habeatur.”—(*Ib.* cap. xviii. s. l. p. 242.)

(IX.) “Ritus ac cærimonie non in æternum permanent tollique possunt ac mutari sine fidei ac unitatis dispendio.”—(*Ib.* § 9, p. 247.)

I have thought it expedient to recite the foregoing authorities upon the nature of Rites and Ceremonies in order to fortify my position, that the questions now pending before me in no way affect the relations of the Church of England to the Church Catholic, but have reference solely to matters of detail and order in her ministrations, which every independent Church has at all times claimed and exercised; and having thus, I trust, divested the issue of the case before me of that importance which has been, not unnaturally perhaps, ascribed to it by the excited feelings of both parties, I return to the consideration of the charges contained in these criminal articles.

I am not called upon to pronounce in the judgment which I am about to deliver any decision upon any question of doctrine. If, indeed, the law had cast so grave a responsibility upon me,

immobilmente stabilito sul possesso e sulla pratica di presso a diciotto secoli, e tenuto in conto di caro e prezioso deposito che i presenti han ricevuto dai maggiori e devono tramandare ai posteri intatto ed illibato.”—(*Esposizione delle Ceremonie della Messa Privata giusta il Rito Ambrosiano*, p. 18 e 20.)

I should have much considered whether it would not have been right and proper to have invoked the aid of spiritual assessors, competent, from their position and learning in the Church, to have assisted and guided me in the discharge of such a duty. I thank God, however, that no such consideration embarrasses me on the present occasion.

*Criminal Articles in the Ecclesiastical Court distinguished from an Indictment.*

Two conclusions result from the premisses which I have stated : first, that the matters in dispute are Ceremonies ; and secondly, that they belong to that category of Ceremonies which are designated " mutable."

There is also a proposition of fact which should be mentioned in this place, that none of the ceremonies complained of are expressly directed to be used either in the Prayer-Book or the Act of Uniformity.

The promoter avers, and undertakes to prove, that with respect to these matters of charge, Mr. Mackonochie has violated the Statutes of Uniformity, certain specified canons of those enacted by the Convocation and Crown in 1603, and the general ecclesiastical law.

The counsel for Mr. Mackonochie have contended, that inasmuch as a breach of the Statutes of Uniformity rendered Mr. Mackonochie liable to be proceeded against criminally in a court of common law, as well as in this Court, I am bound to apply the same rules and observe the same strictness required by the common law courts in a matter of indictment. I am of a different opinion, having regard both to principle and to precedent; nor do I admit the proposition that unless Mr. Mackonochie be proved to have committed a breach of the Statutes of Uniformity, although he should be proved to have offended against the law ecclesiastical, he is entitled to an acquittal from the charges now laid against him. I deem it to be my duty to consider whether the defendant be or be not proved to have offended against the laws ecclesiastical in the matter of one or more, or all, of these criminal charges, and to give my decision accordingly.

I have been referred to a case (*Rex v. Sparkes*, 3 Mod. Rep. 79 ; Cripps, Laws of the Church, 626 ; 2 Burn's Eccl. Law, 429).<sup>1</sup> This was an indictment in the first year of James II. against a clergyman, at the Quarter Sessions in Devonshire,

<sup>1</sup> *Phillim. Eccl. Law*, p. 960.



for using *alias preces* in the Church, and *alio modo* than mentioned in the Book of Common Prayer; and the indictment concluded *contra formam statuti*, etc. He was found guilty, and fined 100 marks. Upon writ of error, it was admitted that offences against these statutes might be inquired of by the justices, but the indictment was held bad, for that it ought to have alleged that the defendant used other forms and prayers instead of those enjoined, which were neglected by him; for that otherwise any person might be indicted who used prayers before his sermon other than such as are required by the Book of Common Prayer; and Mr. Cripps observes, that although this decision established that justices had jurisdiction in such cases, and that indictments, properly framed for offences against these statutes, might be inquired of by them, yet it is probable that indictments of this nature have been very rarely, if ever, preferred; for the jurisdiction of the ecclesiastical court was in no way taken away by those statutes. And wherever it may have been necessary to institute any penal proceedings against clergymen for the omission of, or addition to, anything contained in the Book of Common Prayer, the proceeding has probably been always in the ecclesiastical court; and, indeed, prosecutions in the temporal courts upon those statutes seem to have been discouraged by the judges; for in a case at the Thetford Lent Assizes in 1795, a clerk was indicted upon these statutes, but the evidence was not that he left out or added any prayers, or altered the form of worship, but that he did not read prayers twice on a Sunday, but alternately one Sunday in the morning and the next in the evening, and omitted to read them at all on certain saints' days. Mr. Baron Perryn, who tried the indictment, observed, that it was *primæ impressionis*, and being of opinion that the offence complained of was purely of ecclesiastical cognisance, and not the subject of prosecution in the temporal courts, directed the jury to acquit the defendant, which they accordingly did.

Looking at all the circumstances, it does not appear to me that the case of *Rex v. Sparkes* is worthy of much attention, and it will in no way influence my judgment.

The principal heads under which the argument of the counsel for the promoter may be ranged appear to me to be the following:—

First. That as by each and all of the practices charged in these articles, a new rite or ceremony has been added by Mr. Mackonochie to those which are prescribed by the Statutes of Uniformity, such practices are unlawful.

Secondly. That these particular additions are expressly prohibited.

Thirdly. That they are by necessary implication prohibited, inasmuch as they are connected with Roman or Popish doctrines.

Fourthly. That as such they have, as a matter of fact, been disused ever since the Reformation.

Now it appears to me necessary to examine, in the first instance, these two last grounds of objection, inasmuch as a consideration of the weight due to them must affect the general application of the law—wherever it be obscure or ambiguous, or silent as to positive precept—to the particular subject of these criminal charges.

*Identity of the Status of the Church before and after  
the Reformation.*

I will, therefore, consider in the first instance what weight is to be ascribed to the proposition—

“That they are by necessary implication prohibited, inasmuch as they are connected with Roman or Popish doctrines.”

The counter proposition appears to be that the similarity of these ornaments and practices with those in the Church of Rome does not furnish a safe criterion whereby to try the question of their legality in the Church of England. That the true criterion is conformity with primitive and catholic use, and not antagonism to Rome.

A great part of the arguments addressed to me by the counsel on both sides was founded upon one or the other of these propositions.

I am very far from complaining of these arguments, or of the length to which they extended, for in my opinion a careful consideration of these propositions, however large, grave, and difficult, is a necessary preliminary to the due construction of the laws, formularies, and usages involved in the present inquiry.

They must, if this construction be doubtful, receive, so to speak, a colour and complexion from the judgment which is formed upon the spirit and principles which governed the Reformation of our Church.

It is my duty to form this judgment upon an historical examination—however unequal my powers may be to the task—into the principal acts of the State and the Church which, since the great epoch of the Reformation, have introduced, accompanied, and settled the ecclesiastical establishment of this kingdom.

It is scarcely necessary to say that where the language of a Statute is plain I must obey it, or that where the Court of Appeal has laid down a principle applicable to this case, I must follow it. But, where I have no such guide, I must seek the exposition of the law from the general language of the cardinal statutes, the public and authoritative declarations which accompanied and illustrated them, the judicial construction which they have received, the formularies which these Statutes ordered, whether with or without the concurrent sanction of the Church, though happily the latter alternative is of rare occurrence; I must also consider the canons which bind the clergy, and the opinions of the Bishops and great divines of our Church, who were not unfrequently also the councillors of the State and the authors of the formularies.

### A.—*Identity in Law.*

I propose to pursue my investigation in the following order: first, I will consult the law; secondly, I will have recourse to historical and theological statements.

The inquiry into the law admits of the following subdivisions: the statute law; the canons enacted since the Reformation; and the general common law of the Church.

In the history of no kingdom is the independence of the National Church written with a firmer character than in that of England, in the Statutes of the Realm, in the decisions of Judicial Tribunals, and the debates of Parliament.<sup>1</sup>

The Constitutions of Clarendon, in Henry the Second's reign (A.D. 1164), though directly aimed at the repression of the inordinate claims and privileges of the National Church, were no doubt indirectly "calculated," as Hume observes, "to establish the independency of England on the Papacy;" and therefore, when the King sought Pope Alexander's ratification of them, that Pontiff annulled and rejected all but six out of the sixteen memorable articles.

The resistance of Beckett, and, still more, the general feeling excited by the wicked and impolitic murder of that prelate, procured the practical abrogation of the articles objected to, by the enactments of Edward I. and III., of Richard II., of Henry IV. and V., and of Edward IV.

But in the severe penalties attached to the Statutes of *Provisors* and *Præmunire* may be read the steady determination of the English people to maintain an independent National Church,

<sup>1</sup> *Phillimore's International Law*, vol. ii., ed. 1, pp. 412-416; ed. 2, pp. 467-470.

and to resist the ultramontane doctrines which had taken root in some other countries.

The Statute of Provisors (25th Edw. III., St. 6, A.D. 1350) recites that "the Holy Church of England" was founded in the "estate of prelacy within the realm of England" by the King and nobles of England, and forbids the prevalent abuses of the Pope's bestowing benefices upon *aliens*, "benefices of England which be of the advowry of the people of Holy Church," the reservation of first-fruits to the Pope, and the *provision* or reservation of benefices to Rome. By 38th Edward III., St. 2, c. 1 (A.D. 1363), persons receiving citations from Rome in courts pertaining to the King, etc., are liable to the penalty of 25th Edw. III.

The Statute (A.D. 1392) 16 Richard II. c. 5; renders the procuring of Bulls from Rome liable to *præmunire*, and it recites a variety of Papal aggressions upon the privileges of the Crown; among other matters, as to the translation of Bishops out of the realm, or from one bishopric to another within the realm; and the carrying of treasure out of the realm; and so the realm, destitute as well of counsel as of substance, to the final destruction of the said realm, and so the Crown of England, which hath been so free at all times that it hath been in no earthly subjection, but immediately subject to God in all things touching the regality (*la regalie*) of the same Crown, and to none other, should be submitted to the Pope, and the laws and statutes of the realm by him defeated and avoided at his will, in perpetual destruction of the sovereignty of the kingdom of the King and Lord, his Crown, his royalty, and of all his realm, which God defend.

This statute before the Reformation, and the subsequent enactment of 24 Henry VIII. c. 12, and the great case of *Cawdry*<sup>1</sup> as reported by Lord Coke and corrected by Bishop Stillingfleet, may be said to contain a treatise on constitutional law of England upon the subject of the usurpation of the Papal See upon the liberties of the National Church, and in regard to the authority and privilege of the English Crown. It would be difficult to conceive a clearer or more dignified exposition of the law upon this subject than is contained in the prefatory part of the statute of Henry VIII. "Where by divers sundry old authentick histories and chronicles it is manifestly declared and expressed, that this realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and king, having the

<sup>1</sup> 5 Co. Rep. I. *Stillingfleet's Eccles. Cases*, "Of the Foundation of Ecclesiastical Jurisdiction," vol. ii, p. 49.

dignity and royal estate of the imperial Crown of the same, unto whom a body politic, compact of all sorts and degrees of people, divided in terms, and by names of spirituality and temporality, been bounden and owen to bear next to God a natural and humble obedience; he being also institute and furnished, by the goodness and sufferance of Almighty God, with plenary, whole, and entire power, pre-eminence, authority, prerogative, and jurisdiction, to render and yield justice, and final determination to all manner of folk, resiants, or subjects within this his realm, in all causes, matters, debates, and contentions, happening to occur, insurge, or begin within the limits thereof, without restraint or provocation to any Foreign Princes or Potentates of the world; the body spiritual whereof having power, when any cause of the law divine happened to come in question, or of spiritual learning, then it was declared, interpreted, and showed by that part of the said body politic called the spirituality, now being usually called the English Church, which always hath been reputed, and also found of that sort, that both for knowledge, integrity, and sufficiency of number, it hath been always thought, and is also at this hour sufficient, and meet of itself, without the intermeddling of any exterior person or persons, to declare and determine all such doubts, and to administer all such offices and duties as to their rooms spiritual doth appertain; for the due administration whereof, and to keep them from corruption and sinister affection, the King's most noble progenitors, and the antecessors of the nobles of this realm, have sufficiently endowed the said Church both with honour and possessions; and the laws temporal for trial of property of lands and goods, and for the conservation of the people of this realm in unity and peace, without rapine or spoil, was and yet is administered, adjudged, and executed by sundry judges and ministers of the other part of the said body politic, called the temporalty; and both their authorities and jurisdictions do conjoin together in the due administration of justice, the one to help the other."

At the period of the Reformation the National Church introduced an express denial of the authority of the Pope,—henceforth called in all public acts and documents the Bishop of Rome,—into her articles and canons, and an acknowledgment of the temporal supremacy of the Crown over the ecclesiastical as well as the civil state. Henry VIII. was excommunicated, and in the Bull his subjects were commanded to renounce their allegiance, and the nobles were ordered "*sub ejusdem excommunicationis ac perditionis bonorum suorum pœnis*," to unite with all Christian princes in expelling Henry from England. Elizabeth was excommunicated in pretty similar terms, but not until

twelve years after her accession. In answer to a request from the Emperor and other Roman Catholic princes, that she would allow the Roman Catholic places of worship, she replied that she would not allow them to keep up a distinct communion, alleging her reasons in these remarkable words, "for there was no new faith propagated in England; no religion set up but that which was commanded by Our Saviour, practised by the primitive Church, and unanimously approved by the fathers of the best antiquity." The Roman Catholics, both in England and Ireland, appeared to have outwardly conformed to the services of the Church for about ten years.

The peculiar character of the English people and the English Church is also strongly shown in their determination not to admit the general body of the Canon Law into these realms, but only such portions of it as were consistent with the Constitution, the Common Law, and the peculiar usages of the Anglican Church. The rules of the general Canon Law were principally introduced into this country, and considerably modified in their introduction through the medium of provincial constitutions passed by the authority of the Metropolitans of England. It is true that the Pope endeavoured to maintain his authority in this matter by sending legates from time to time, and by the device of creating the Archbishop of Canterbury "*legatus natus*" of the Holy See.<sup>1</sup> But England possesses in her provincial constitutions, collected by Lyndwood, a body of domestic ecclesiastical law, upon which, before the Reformation, a national independent character was in many respects impressed. The common law was always disposed to recognise these constitutions, while to the general canon law it always manifested considerable averseness.

But it has always been the doctrine of the temporal and ecclesiastical courts since the Reformation that the constitutions contained in Lyndwood, and the general usages of the Church, and certain portions of the canon law admitted by those usages, are still binding upon the Church of this realm.

I will give some instances:—

So late as the year 1848 criminal articles were preferred against a clerk in holy orders for accepting a benefice with cure of souls whilst in possession of another benefice with a

<sup>1</sup> "Thus much is evident, as Gervasius, in the life of William, at this time (anno 1125) Archbishop of Canterbury, well observes, that the legatine power was looked upon as a breach of the law of England, and an invasion of the ancient liberties of the English Church and Nation, as well as the rights of the Sees of Canterbury and York in particular, and that the minds of men were scandalised and offended at it."—*Inett's Origines Anglicanæ*, vol. ii. p. 223.

cure of souls without dispensation. The articles alleged that by the 29th canon of the 24th Council of Lateran, A.D. 1215, he was *ipso jure* deprived of the first living. Sir H. Jenner Fust observed, "The first of the articles sets forth the law, namely, that by decree of the Council of Lateran, when any person in possession of a benefice with cure of souls shall accept another like benefice, the former becomes void, that is, he loses that benefice, and that is the law of this country at this time. The Statute of Henry VIII. does not affect this law, except that it makes the other living voidable; that is, by sentence, or void by presentation of the patron.

"Under these circumstances, the facts being proved, the Court is bound to sign a sentence, declaring the perpetual curacy of Forest Hill void by Mr. Mavor's acceptance of another benefice with cure of souls."<sup>1</sup>

In the case of *Saunders v. Head* (3 Curteis' Rep. 577) Sir Herbert Jenner Fust said, "It has been made a subject of complaint, on behalf of Mr. Head, that the articles do not contain any specification of the law relied on to establish them; that the first article is merely general, and that under such general pleading it is difficult for a defendant to know how to address himself to the question of law applicable to his case; that the Canon law has been referred to generally without particular specification."

(P. 579)—

"Now the objection taken in this case is not taken for the first time, it has been frequently taken in this Court, and, as often, overruled. The answer always given to the objection is, that where the general law ecclesiastical is relied on, it is not necessary to plead specifically; that where the offence is one generally cognisable in the Ecclesiastical Court it is not necessary to point out the particular Canon or Statute on which the proceedings are founded."

In the case of *Kemp v. Wickes*, Sir John Nicholl said, "The law of the Church of England and its history are to be deduced from the ancient general Canon law, from the particular constitutions made in this country to regulate the English Church, from our own Canons, from the Rubric, and from any Acts of Parliament that may have passed upon the subject; and the whole may be illustrated, also, by the writings of eminent persons."—(*Kemp v. Wickes*, 3 Phillimore's Rep. 276.)

In the year 1866 a Royal licence was granted to Convoca-

<sup>1</sup> *Burder v. Mavor*, 6 Notes of Cases, 1.

tion to alter certain Canons of 1603; the licence recited the 25th of Hen. VIII. c. 29, restraining the meeting of Convocation, and continued as follows:—

“And further, by the said Act it is provided that no canons, constitutions, or ordinance should be made or put in execution within this realm, by authority of the Convocation of the Clergy, which shall be contrariant or repugnant to the King’s prerogative royal, or the customs, laws, or statutes of this realm, anything in the said Act to the contrary thereof notwithstanding; and, lastly, it is also provided by the said Act that such Canons, Constitutions, Ordinances, and Synodals provincial which then were already made, and which were not contrary or repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the King’s prerogative royal, should then still be used and executed as they were upon making of the said Act, till such time as they should be viewed, searched, or otherwise ordered and determined by the persons mentioned in the said Act, or the more part of them, according to the tenor or form and effect of the said Act, as by the said Act amongst divers other things more fully and at large it doth and may appear.”

#### *B.—Historical and Theological Statements as to Identity.*

Having made these observations with regard to the connection that subsists between the law as to the Church before and after the Reformation, I will now advert to the evidence of identity furnished by our history and theology since the Reformation.

In 1549, Edward the Sixth’s government in their message to the Devonshire rebels state, “It seemeth to you a new service, and indeed is none other but the old; the self-same words in English which were in Latin, saving a few things taken out.”<sup>1</sup>

Constant references are made in the Homilies, which were produced under the auspices of Cranmer early in the reign of Edward VI., to the “usages of the primitive Church,” and the “sentences and judgements of the most ancient, learned, and godly doctors of the Church.”

Collier,<sup>2</sup> speaking of the various influences at work during this reign, says, “Peter Martyr concurred with Bucer in his animadversions upon the Common Prayer Book, as appears by his letter to him upon that subject.

<sup>1</sup> *Foxe, Acts and Mon.*, vol. ii. Bk. 9, p. 15. Note to Procter on the Book of Common Prayer, pp. 25, 26.

<sup>2</sup> *Ecclesiastical History of Great Britain*, vol. v. Book iv. p. 406 (ed. 1840).



“However, from what has been observed, the reader may perceive Bucer was somewhat overcharged with scruples, and carried his censure too far. Neither are his remarks at all reconcileable with his concessions in the beginning of his discourse. And amongst other things, his setting aside antiquity with so much ease is particularly remarkable. There is a great deference, without doubt, due to the authority of the first centuries. It was then the apostolical traditions were fresh, miracles were frequent, and the Church under the conduct of a distinguishing illumination. Then secular views and projects of ambition were foreign to inclination. Under such opportunities and qualifications what room is there for suspicion of ignorance or foul dealing? To reject the usages of the ancient Church, because we do not meet with them in Scripture, is no good logic. It is plainly not the design of the New Testament to furnish liturgies and rituals. The converts to St. Peter’s sermon continued steadfastly in breaking of bread;<sup>1</sup> that is, administering the Holy Eucharist; and in prayers. But what the prayers were at this solemnity is nowhere delivered in Scripture. Where the extraordinary effusions of the Holy Ghost were not supplied, things of this nature were left to the discretion of the spiritual directors, who were to govern themselves by St. Paul’s general rule, ‘Let all things be done decently and in order’ (1 Cor. xiv.)

“It is true, if the religious customs of antiquity were plainly inconsistent with the doctrine of the inspired writings, we ought to stand off from them; but in other cases our Saviour’s saying is applicable to the present purpose, ‘He that is not against us, is for us.’ And where the governors of the Church are under no restraint as to ceremonies and compositions, what should hinder them from following their judgments, and directing as they think fit? ‘For where there is no law, there can be no transgression.’ What should hinder them in this case from enlarging the circumstances of worship, from assisting the memory, raising the affections, and explaining the mysteries, with additional ceremonies and devotions?

“His objection against primitive usages, because they have been overvalued and misapplied by the Church of Rome, goes upon a mistaken ground; for, granting the allegations hold good, there is no consequence in the reasoning. To argue from the abuse against the use of things is the way to take our Bibles from us; for what book has been more abused than the inspired text? By this topic almost everything in religion and nature must be contraband and prohibited. Bucer was formerly sensible of this fallacy; he saw the danger of disput-

<sup>1</sup> Acts ii. 42.

ing at this rate, and determines against it. To quit antiquity in any custom because it is continued in the Church of Rome has neither reason nor charity in it. It is a peevish principle, and helps to keep up a spirit of division. We ought rather to lament the breaches in the Church than make them wider. All reproachful language, humoursome distance, and unnecessary squabbles, serve only to exasperate one part of Christendom against another, and make our common religion the jest of infidels and atheists."

The same author<sup>1</sup> thus introduces the subject of the apology of Jewel, which is referred to in the 36th of the Canons of 1603.

"The next remarkable occurrence is Bishop Jewel's sermon at Paul's Cross. It was preached in Lent this year upon these words of the apostle Paul, 'I have received of the Lord that which also I deliver unto you.' From this text he took occasion to make that remarkable challenge in defence of the Reformation. The Church of England was reproached with novelty by the Papists, and charged with departing from primitive doctrine and practice. To wipe off these aspersions the Bishop put the case upon a bold issue, and declared in the pulpit, 'That if any learned men of all our adversaries, or if all the learned men that are alive, are able to bring any one sufficient sentence out of any old Catholic doctor or father, or out of any old general council, or out of the Holy Scriptures of God, or any one example of the primitive Church, whereby it may be plainly and clearly proved that for the first six hundred years after Christ there was any private mass in the world; or that there was then any communion administered under one kind; or that the people had their common prayer in a language which they did not understand; or that the Bishop of Rome was then called universal bishop or head of the universal church; or that the people were then taught to believe that Christ's body is really, substantially, corporally, carnally, or naturally in the sacrament,' etc. etc.

"If any one of his adversaries were able to make good but a single proposition amongst all these, either by sufficient declarations in Scripture, or by the testimony of the ancient fathers and councils, he was ready to give up the contest and subscribe himself a proselyte."

It is not unworthy of remark that in the Canon of 1571, concerning preachers, it is ordered, "In primis vero videbunt, nequid unquam doceant pro concione quod a populo religiose

<sup>1</sup> *Collier, Eccles. Hist.*, vol. vi. Book vi. p. 303.

teneri et credi velint, nisi quod consentaneum sit doctrinæ Veteris aut Novi Testamenti, quodque ex illa ipsa doctrina Catholici patres et veteres episcopi collegerint.”—(*Cardwell's Synodalia*, vol. i. p. 126.)

The Puritans did not dispute the lawfulness of set forms of prayer, but they were to be such as were used in Geneva and Scotland (*Neal's History*, p. 236; *Madox*, p. 78). But Bishop Burnet observes, speaking of the year 1548:<sup>1</sup> “It being resolved to bring the whole worship of God under set forms; they (our Reformers) set one general rule to themselves (which they afterwards declared) of changing nothing for novelty's sake, or merely because it had been formerly used. They resolved to retain such things as the primitive Church had practised, cutting off such abuses as the latter ages had grafted on them, and to continue the use of such other things which, though they had been brought in not so early, yet were of good use to beget devotion, and were so much recommended to the people by the practice of them that the laying these aside would, perhaps, have alienated them from the other changes they made; and, therefore, they resolved to make no change without very good and weighty reasons. In which they considered the practice of our Saviour, who did not only comply with the rites of Judaism himself, but even the prayer he gave to his disciples was framed according to their forms; and his two great institutions of Baptism and the Eucharist did consist of rites that had been used among the Jews; and since he who was delivering a new religion, and was authorised in the highest manner that ever any was, did yet so far comply with received practices as from them to take those which he sanctified for the use of his Church, it seemed much fitter for those who had no such extraordinary warrant to give them authority in what they did, when they were reforming abuses, to let the world see they did it not from the wanton desire of change or any affectation of novelty, and with those resolutions they entered on their work.”

I now approach an authority to which almost universal homage has been accorded,—the authority of Hooker.<sup>2</sup>

“They,” he says, “which measure religion by dislike of the Church of Rome think every man so much the more sound by how much he can make the corruption thereof to seem more large; and, therefore, some there are, namely, the Arians in reformed churches of Poland, which imagine the canker to have eaten so far into the very bones and marrow of the Church of

<sup>1</sup> *History of Reformation*, vol. ii. p. 150 (ed. Oxford, 1829).

<sup>2</sup> *Hooker, Eccles. Pol.*, Book iv. chap. viii.

Rome as if it had not so much as a sound belief, no not concerning God himself, but that the very belief of the Trinity were a part of antichristian corruption; and that the wonderful providence of God did bring to pass that the bishop of the see of Rome should be famous for his triple crown,—a sensible mark whereby the world might know him to be that mystical beast spoken of in the Revelation, to be that great and notorious antichrist in no one respect so much as in this, that he maintaineth the doctrine of the Trinity. Wisdom therefore and skill is requisite to know what parts are sound in that Church and what corrupted.

“Neither is it to all men apparent which complain of unsound parts, with what kind of unsoundness every such part is possessed. They can say, that in doctrine, in discipline, in prayers, in sacraments, the Church of Rome hath (as it hath indeed) very foul and gross corruptions, the nature whereof, notwithstanding because they have not for the most part exact skill and knowledge to discern, they think that amiss many times which is not; and the salve of reformation they mightily call for, but when and what the sores are which need it, as they wot full little, so they think it not greatly material to search.

“That<sup>1</sup> the Church of Rome doth hereby take occasion to blaspheme, and to say our religion is not able to stand of itself unless it lean upon the staff of their ceremonies, is not a matter of so great moment that it need to be objected, or doth deserve to receive an answer. The name of blasphemy in this place is like the shoe of Hercules on a child’s foot. If the Church of Rome do use any such kind of silly exprobaton, it is no such ugly thing to the ear that we should think the honour and credit of our religion to receive thereby any great wound. They which hereof make so perilous a matter do seem to imagine that we have erected of late a frame of some new religion, the furniture whereof we should not have borrowed from our enemies, lest they relieving us might afterwards laugh and gibe at our poverty; whereas in truth the ceremonies which we have taken from such as were before us are not things that belong to this or that sect, but they are the ancient rites and customs of the Church of Christ, whereof ourselves being a part, we have the selfsame interest in them which our fathers before us had, from whom the same are descended unto us.

“No man which is not exceeding partial can well deny but that there is most just cause whereof we should be offended greatly at the Church of Rome. Notwithstanding at such

<sup>1</sup> *Hooker, Eccles. Pol., Book iv. chap. ix.*

times as we are to deliberate for ourselves, the freer our minds are from all distempered affections the sounder and better is our judgment. When we are in a fretting mood at the Church of Rome, and with that angry disposition enter into any cogitation of the orders and rites of our Church, taking particular survey of them, we are sure to have always one eye fixed upon the countenance of our enemies, and according to the blithe or heavy aspect thereof our other eye showeth some other suitable token either of dislike or approbation towards our own orders. For the rule of our judgment in such case being only that of Homer, 'This is the thing which our enemies would have,' what they seem contented with, even for that very cause we reject; and there is nothing but it pleaseth us much the better if we espy that it galleth them.

"Miserable were the state and condition of that Church the weighty affairs whereof should be ordered by those deliberations wherein such a humour as this were predominant. We have most heartily to thank God, therefore, that they amongst us to whom the first consultations of causes of this kind fell were men which aiming at another mark, namely, the glory of God and the good of this His church, took that which they judged thereunto necessary, not rejecting any good or convenient thing only because the Church of Rome might perhaps like it."

The Puritans at the Hampton Court Conference in the reign of James the First vehemently objected to the sign of the Cross in the sacrament of Baptism, and the reply to their objections incorporated in the thirtieth canon (of 1603) deserves the careful study of those who would thoroughly understand the mind of the English Church upon the subject now under consideration:<sup>1</sup>

"And this use of the sign of the Cross in Baptism was held in the primitive Church, as well by the Greeks as the Latins, with one consent and great applause. At what time, if any had opposed themselves against it, they would certainly have been censured as enemies of the name of the Cross, and consequently of Christ's merits, the sign whereof they could no better endure. This continual and general use of the sign of the Cross is evident by many testimonies of the ancient fathers."

"It must be confessed that in process of time the sign of the Cross was greatly abused in the Church of Rome, especially after that corruption of popery had once possessed it. But the abuse of a thing doth not take away the lawful use of it. Nay, so far was it from the purpose of the Church of England to forsake and reject the Churches of Italy, France, Spain, Germany, or any such like Churches in all things which they held and practised, that, as the apology of the Church of England con-

<sup>1</sup> Canon 30 (The lawful use of the Cross in Baptism explained).

fesseth, it doth with reverence retain those ceremonies which doth neither endamage the Church of God, nor offend the minds of sober men, and only departed from them in those particular points wherein they were fallen both from themselves in their ancient integrity, and from the apostolical Churches which were their first founders. . . . So that for the very remembrance of the Cross, which is very precious to all of them that rightly believe in Jesus Christ, and in the other respects mentioned, the Church of England hath retained still the sign of it in Baptism, following therein the primitive and apostolical Churches."

Dr. Jackson, who was President of Corpus Christi College and Dean of Peterborough, one of our most learned divines, writing A.D. 1629, in his treatise of the Holy Catholic Faith and Church, says,<sup>1</sup> "That the title of *Catholic* is proper and essential unto the faith professed by the present visible Church of England, but cannot truly be attributed to the faith or creed of the *modern visible Romish Church*.

"Whether the name *Catholic* were first bestowed upon the Church, or upon that faith which is the life and soul of the Holy Apostolic Church, shall be no part of our inquiry. It sufficeth that the name *Catholic* itself is univocal in respect both of Church and faith. True faith is therefore *Catholic* faith because it is the only door or way unto salvation, alike common unto all, without national or topical respect. Whosoever of any nation have been saved have been saved by this one and the same faith, and whosoever will be saved (as Athanasius speaks) must hold this *Catholic faith*, and he must hold it *pure and undefiled*. The main question then is, who they be that hold this *Catholic faith*, and whether they hold it *undefiled or no*. Were Vincentius' rules as artificial as they are orthodoxal and honest, the issue betwixt us and the Romanist would be very easy and triable. But let us take them as they are: 'Id Catholicum est quod ab omnibus ubique et semper, etc.' 'That is Catholic which is held by all, in all places, and at all times.'

"The three special notes of the Catholic faith or church by him required are *universality, antiquity, and consent*. Whether these three members be different or subordinate, and oftentimes coincident, I leave it to be scanned by logicians. According to the author's limitation, all three marks agree to us, not to the Romanist.

"The fallacy by which the Romanists deceive poor simple people is in making them believe that our religion and their

<sup>1</sup> *Works*, vol. xii. chap. xxi. p. 161, ed. 1845.

religion, our faith and their faith, are *duo prima diversa*, or so totally distinct that part of the one could not be included in the other. But for the *universality* of our faith we have every member of the Romish Church a suffragant or witness for us. First, nothing is held as a point of faith in our Church but the present Romish Church doth hold the same, and confess the same to have been held by all orthodoxal antiquity. So that for the *form* of faith established in our Church, we have the consent of the primitive Church, of the four first general councils, of all succeeding ages unto this present day, the consent likewise of the present Romish Church, and of ourselves. Now, as France is a great deal bigger than Normandy, if we compare them as distinct and opposite, and yet France and Normandy is bigger than France without Normandy, so likewise though the present visible Romish Church be much greater than the Church of England, yet seeing the Romish Church, how great soever, doth hold all the points of faith which our Church doth for catholic and orthodoxal, our consent and their consent, our confession and their confession, is more universal than their consent without ours. But if their consent unto the points of faith believed by us prove our faith to be universal, and our Church by consequence to be *catholic*, why should not our consent unto the points of faith believed by them prove their faith to be universal, or their Church to be *catholic*? Because it is not enough to hold all points of Catholic faith, unless the same points be kept *holy and undefiled*. The Romish Church, we grant, doth hold all points of Catholic faith, and so far as she holds these points we dissent not from her; yet dissent from her we do in that she hath *defiled* and polluted the Catholic faith with new and poisonous doctrines, for which she neither hath the consent of antiquity, nor of reformed churches."

And again, answering that silly taunt of the Romanists, "Where was your Church before the Reformation?" he observes: "The question is muchwhat the same as if they should ask us, where was King Henry the Seventh's kingdom, where were his subjects, where was your commonweal whilst Richard the Third did call parliaments, and sway the sceptre of this kingdom? The kingdom of Henry the Seventh and of his successors, or the English commonweal, was in the same place then as now it is. The deposition of the tyrant, the dissolution of the tyranny, and the reducing of English subjects to their true allegiance, did work no essential alteration in the commonweal of the kingdom, but only a reformation of the government, and reduction of it to the fundamental laws of this land.

"No more did the rejection of the Romish Church's usurped

authority in matters spiritual induce any substantial alteration in the English Church, but a reformation or reduction of it unto the fundamental constitution of the primitive Church.”<sup>1</sup>

In the warrant issued by Charles II. for the conference at the Savoy, which preceded the adoption of our present Prayer-Book (*Cardwell's Conferences*, p. 300), a commission of certain persons is appointed to advise upon and review the said Book of Common Prayer, comparing the same with the most ancient liturgies which have been used in the Church in the primitive and purest times.

So careful were the compilers of this great treasure of the Church that it should speak the Catholic language, to which Christian ears and hearts had been accustomed, while the apostolical spirits and doctrine still guided the undivided Church.

Hear on this subject the erudite and eloquent Donne: “If they (the Roman Catholics) say, we are perplexed with differences of opinions amongst ourselves, let this satisfy them, that we do agree all in all fundamental things; and that in things much nearer the foundation than those in which our differences lie they differ amongst themselves, with more acrimony and bitterness than we do. If they think to perplex us with the fathers, we are ready to join that issue with them; where the fathers speak unanimously, dogmatically, in matters of faith, we are content to be tried by the fathers. If they think to perplex us with councils, we will go as far as they in the old ones; and as far as they for meeting in new councils, if they may be fully, that is, royally, imperially called, and equally proceeded in, and the resolutions grow and gathered there upon debates upon the place, and not brought thither upon commandment from Rome.”—(*Donne's Works*, vol. iii. p. 11.)

Bishop Cosin, an authority of special significance and weight, because he largely assisted in the compilation of our Prayer-Book,<sup>2</sup> says: “In truth we have continued the old religion; and the ceremonies which we have taken from them that were before us are not things which belong to this or that sect, but they are the ancient rites and customs of the Church of Christ, whereof ourselves being a part, we have the selfsame interest in them which our fathers before us had, from whom the same descended to us. To abrogate those things without constraint of apparent harm thence arising had been to alter unjustly the universal practice of the people of God and those general decrees of the fathers, which (in St. Augustin's language) is

<sup>1</sup> *Works*, vol. xii. chap. xxi. p. 131.

<sup>2</sup> Notes on the Prefaces to the Book of Common Prayer.—*Works*, vol. v. pp. 13-15.



madness and insolence to do, both in respect of the universal authority of the Church, which no particular Church has power to control, and also in regard of reasons before mentioned."

Archbishop Bramhall, who wrote in 1677 his "Just Vindication of the Church of England," etc., says: "But it is not enough to charge the court of Rome unless we can discharge ourselves, and acquit our own Church, of the guilt of schism which they seek to cast upon us. First, they object that we have separated ourselves systematically from the communion of the Catholic Church. God forbid! Then we will acknowledge without any more to do, that we have separated ourselves from Christ, and all His holy ordinances, and from the benefit of His passion, and all hope of salvation.

"But the truth is, we have no otherwise separated ourselves from the communion of the Catholic Church than all the primitive orthodox fathers, and doctors, and churches did long before us, that is, in the opinion of the Donatists, as we do now in the opinion of the Romanists; because the Romanists limit the Catholic Church now to Rome in Italy, and those Churches that are subordinate to it, as the Donatists did then to Cartenna in Africa, and those Churches that adhered to it. We are so far from separating ourselves from the communion of the Catholic Church that we make the communion of the Christian Church to be thrice more Catholic than the Romanists themselves do make it, and maintain communion with thrice so many Christians as they do. But how much our Church should make itself, as the case stands, more Roman than it is, by so much it should thereby become less Catholic than it is."—(*Works*, folio, Dublin, chap. ix.)

"As for my religion," said the holy Ken, with almost his latest breath, "I die in the holy catholic and apostolic faith, professed by the whole Church before the disunion of east and west; more particularly I die in the communion of the Church of England, as it stands distinguished from all papal and puritan innovations, and as it adheres to the doctrine of the Cross."

Bishop Beveridge compiled, with infinite labour and accuracy, a *Codex Canonum Ecclesiæ Primitivæ vindicatus ac illustratus*:—in his preface to which are these words (s. 6), "For when this our English Church, through long communion with the Roman Church, had contracted like stains with her, from which it was necessary that it should be cleansed, they who took that excellent and very necessary work in hand, fearing that they, like others, might rush from one extreme to the other, removed indeed those things, as well doctrines as cere-

monies, which the Roman Church had newly and insensibly superinduced, and, as was fit, abrogated them utterly. Yet notwithstanding whatsoever things had been at all times believed and observed by all Churches in all places, those things they most religiously took care not so to abolish with them. For they well knew that all particular Churches are to be formed on the model of the Universal Church, if indeed according to that general and received rule in ethics, 'every part which agreeth not with its whole is therein base.' Hence, therefore, these first reformers of this particular Church, directed the whole line of that reformation which they undertook, according to the rule of the whole or Universal Church, casting away those things only which had been either unheard of, or rejected by the Universal Church, but most religiously retaining those which they saw, on the other side, corroborated by the consent of the Universal Church. Whence it hath been brought to pass, that although we have not communion with the Roman, nor with certain other particular Churches, as at this day constituted, yet have we abiding communion with the Universal and Catholic Church, of which evidently ours, as by the aid of God first constituted, and by his pity still preserved, is the perfect image and representation."<sup>1</sup>

Observe how Barrow speaks in his *Treatise on the Pope's Supremacy of the Council of Trent*. "This new creed," he says, "of Pius iv. containeth these novelties and heterodoxies: (1) Nine sacraments; (2) Trent doctrines of justification and original sin; (3) Propitiatory sacrifice of the mass; (4) Transubstantiation; (5) Communicating under one kind; (6) Purgatory; (7) Invocation of Saints; (8) Veneration of reliques; (9) Worship of images; (10) The Roman Church to be the mother and mistress of all Churches; (11) Swearing obedience to the Pope; (12) receiving the decrees of all synods and of Trent."

Bishop Sanderson<sup>2</sup> believed that "all men would be found much mistaken who account all Popery that is taught or practised in the Church of Rome. Our godly forefathers, to whom (under God) we owe the purity of our religion, and some of whom laid down their lives for the defence of the same, were sure of another mind, if we may, from what they did, judge what they thought. They had no purpose (nor had they any warrant) to set up a new religion, but to reform the old, by purging it from those innovations, which on tract of time (some sooner, some later) had mingled with it, and corrupted it both in the doctrine and worship. According

<sup>1</sup> *Beveridge's Works* (Oxford, 1848), vol. xi. p. xxiii.

<sup>2</sup> Died in 1663.

<sup>3</sup> Preface to fourteen sermons.

to this purpose they produced, without constraint or precipitancy, freely and advisedly, as in peaceable times, and brought their intentions to a happy end, as by the results thereof contained in the articles and liturgy of our Church, and the prefaces thereunto, doth fully appear. From hence chiefly, as I conceive, we are to take our best scantling, whereby to judge what is, and what is not, to be esteemed Popery. All those doctrines then held by the modern Church of Rome, which are either contrary to the written Word of God, or but superadded thereunto as necessary points of faith to be of all Christians believed under pain of damnation; and all those superstitions used in the worship of God which are either unlawful as being contrary the Word; or being not contrary and therefore arbitrary and indifferent, are made essentials, and imposed as necessary parts of worship: these are, as I take it, the things whereunto the name of Popery doth properly and peculiarly belong. But as for the ceremonies used in the Church of Rome which the Church of England at the Reformation thought fit to retain, not as essential or necessary parts of God's service, but only as accidental and mutable circumstances attending the same, for order, comeliness, and edification's sake; how these should deserve the name of popish, I so little understand, that I profess I do not yet see any reason why, if the Church had then thought fit to have retained some other of those which were then laid aside, she might not lawfully have so done; or why the things so retained should have been accounted popish. The plain truth is this: the Church of England meant to make use of her liberty and the lawful power she had (as all the Churches of Christ have, or ought to have) of ordering ecclesiastical affairs here; yet to do it with so much prudence and moderation that the world might see by what was laid aside, that she acknowledged no subjection to the See of Rome; and by what was retained, that she did not secede from the Church of Rome out of any spirit of contradiction, but as necessitated thereunto for the maintenance of her just liberty. The number of ceremonies was also then very great, and thereby burdensome, and so the number thought fit to be lessened. But for the choice which should be kept and which not, that was wholly in her power and at her discretion."

Bishop Smalridge, the accomplished friend of Addison, wrote a sermon on the authority of the governors of our Church, to prescribe rites and ceremonies (vol. i. p. 145), in the course of which he said:—

"But because those who allow some rites to be lawful may entertain some doubts concerning the use of ours, as apprehend-

ing them to have some particular faults which do not belong to all ceremonies in general, I shall proceed to clear those which we of this Church are required to observe, from such objections as are brought to prove them unlawful and unwarrantable. Those who scruple the use of them allege it as one main ground of their scruples, that those ceremonies which are used in our Church are also used in the Church of Rome, and they are therefore cautious of observing them, lest they should thereby countenance the errors and corruptions of that Church. Now this would be a good argument against the usage of such rites, if it could be proved that those who err in some things do certainly err in everything; or, that we ought to show our abhorrence of the corruptions of a Church by condemning and abolishing even those usages which have nothing in them but what is innocent and incorrupt. But we have not declared war against those of that Church as they are Christians, but as they are perverters of the Gospel of Christ; we do not profess to differ from them in everything, but only in such things wherein we apprehend them to have degenerated from the pure and undefiled Church of Christ.

“We think that we should not be able to vindicate ourselves from the charge of schism, which they bring against us, if whatever doctrine they held, whatever rite they practised, that we should, for no other reason but because they held and practised it, forthwith condemn and reject.

“The ablest champions for the cause of the Reformation have always thought it the best answer against the charge of schism, to allege and prove that we have no further departed from them than they departed from the pure and primitive Church of Christ. What is contrary to the purity of the Gospel, that we reject; not because popish, but because repugnant to the laws and doctrines of Christ: what is noways contradictory to the simplicity of the Gospel, what may be subservient to piety, that we retain; not because practised by the Church of Rome, but because agreeable to the rules of the Gospel. If there be anything in our ceremonies that is sinful, they ought presently to be abolished, though there was nothing of the same kind practised by those of the Roman communion.<sup>1</sup> What is decent and laudable in them cannot lose its worth and value, because others have them in common with us. If it be laid down as a good rule of reformation that we must depart as far as possible from Rome, we must renounce the articles of our creed, because they of that Church profess to believe them; we must declare our-

<sup>1</sup> About this time Archbishop Tenison wrote a remarkable “Discourse of Idolatry” (chap. xii. p. 279), and upon this principle vindicated the use of images and pictures in the Church of England.

selves Socinians that we may be thought staunch Protestants; and we must renounce the doctrine of the Trinity, because it is held by those who do also hold that of transubstantiation. In the Romish religion there are some things evil, some things good, some things wholly indifferent. Whatever is sinful in that communion we are bound to reject, and have, we think, accordingly rejected; what is good we ought to retain, and therefore do retain; what was indifferent, it was at the discretion of our reformers either to keep or change, as they thought should be more expedient. Private persons may, according to the variety of their judgments, think some things might have been kept which were left off, or some things might have been dropped which are still kept; but unless they can prove those that have been abolished to be necessary, or those that are reserved to be unlawful, they are bound quietly to submit to the abolition of the former, and to the usage of the latter."

Bishop Bull, writing in 1705 on *The Corruptions of the Church of Rome, in Answer to the Bishop of Meaux's Queries*,<sup>1</sup> thus maintains the true position of our Church:—

"I proceed to the bishop's questions: He asks me what I mean by the Catholic Church? I answer, What I mean by the Catholic Church, in the book, which he all along refers to, I have already shown, and the very title of the book sufficiently declares. If he asks me what I mean by the Catholic Church, speaking of it as now it is, I answer, By the Catholic Church, I mean the Church Universal, being a collection of all the Churches throughout the world, who retain the faith (ἀπαξ) once delivered to the Saints (Jude 3); that is, who hold and possess in the substance of it that faith and religion which was delivered by the Apostles of Christ to the first original Churches, according to Tertullian's rule before mentioned. Which faith and religion is contained in the Holy Scriptures, especially of the New Testament, and the main fundamentals of it comprised in the canon or rule of faith, universally received throughout the primitive Churches, and the possession thereof acknowledged to be a sufficient tessera or badge of a Catholic Christian. All the Churches at this day which hold and profess this faith and religion, however distant in place, or distinguished by different rites and ceremonies, yea, or divided in some extra-fundamental points of doctrine, yet agreeing in the essentials of the *Christian* religion, make up together one Christian Catholic Church under the Lord Christ, the supreme head thereof. The Catholic Church under this notion is not a confused heap of societies separated one from another."—These are important words.—"But it seems no other union of the Church

<sup>1</sup> *Works*, ed. Oxford, 1827, vol. ii. p. 242.

will satisfy the bishop, but an union of all the Churches of Christ throughout the world, under one visible head, having a jurisdiction over them all, and that head the Bishop of Rome for the time being. But such an union as this was never dreamed of amongst Christians for at least the first six hundred years, as shall be shown in its due place."

In addition to this mass of evidence derived from the writings of English divines, I may cite the following testimonies to the same effect from the works of three distinguished foreigners, who watched with deep interest the form which the Reformation of the Church took in England: Isaac Casaubon, Hugo Grotius, and Saravia:—

Casaubon (ad Salmas. Epist. 837, p. 489, A.D. 1612): "Quod si me conjectura non fallit, totius Reformationis pars integerrima est in Anglia, ubi cum studio veritatis viget studium antiquitatis."

Casaubon (Epist. ad Cardinal. Perron, p. 494): "Parata est Ecclesia Anglicana fidei suæ reddere rationem, et rebus ipsis evincere, auctoribus Reformationis hic institutæ non fuisse propositum novam aliquam ecclesiam condere, ut imperiti et malevoli calumniantur; sed quæ erant collapsa, ad formam revocare quam fieri posset optimam; optimam autem judicarunt nascenti Ecclesiæ ab Apostolis traditam, et proximis seculis usurpatam."

Hugo Grotius (Epist. ad Boetsaeler, Ep. 62, p. 21, ed. 1637): "Certum est mihi *λειτουργίαν* Anglicanam, item morem imponendi manus adolescentibus in memoriam Baptismi, auctoritatem Episcoporum, et Presbyteria ex solis Pastoribus composita multaque alia ejusmodi satis congruere institutis vetustioris Ecclesiæ, a quibus in Gallia et Belgio recessum negare non possumus."

(Epist. ad Corvinum, Epist. p. 434): "Qui illam optimam antiquitatem sequuntur ducem, iis non eveniet ut multum sibi ipsis sint discolores. In Anglia vides quam bene processerit dogmatum noxiorum repurgatio; hac maxime de causa, quod que id sanctissimum negotium procurandum suscepere, nihil admiserint novi, nihil sui, sed ad meliora secula intentam habuere oculorum aciem."

Hadrian Saravia, the friend of Hooker: "Among others that have reformed their churches, I have often admired the wisdom of those who restored the true worship of God to the Church of England,—who so tempered themselves, that they cannot be reproved for having departed from the ancient and primitive customs of the Church of God; and that moderation they have used, that by their example they have invited others to reform, and deterred none."—(*Wordsworth, Theophilus Anglicanus*, p. 171.)

In 1851 the Archbishops of Canterbury and York and twenty bishops published a statement in which they set forth "the undoubted identity of the Church before and after the Reformation;" and that at the Reformation the English Church rejected certain corruptions and established "one uniform ritual," but "without in any degree severing her connection with the ancient Catholic Church."—(*Phillimore's International Law*, vol. ii. ed. 1, p. 422 (ed. 2, p. 476), and the *Guardian*, April 2, 1851.)

In 1867, eight primates and sixty-eight bishops assembled from all parts of the globe, under the presidency of the Metropolitan of Canterbury.

The resolutions of this conference were prefaced by the following introduction:—

"We, Bishops of Christ's Holy Catholic Church, in visible communion with the United Church of England and Ireland, professing the Faith delivered to us in Holy Scripture, maintained by the Primitive Church, and by the Fathers of the English Reformation, now assembled by the good providence of God, at the Archiepiscopal Palace of Lambeth, under the presidency of the Primate of all England, desire, first, to give hearty thanks to Almighty God for having thus brought us together for common counsels and united worship; secondly, we desire to express the deep sorrow with which we view the divided condition of the flock of Christ throughout the world, ardently longing for the fulfilment of the prayer of our Lord, 'That all may be one, as Thou, Father, art in me, and I in Thee, that they also may be one in Us, that the world may believe that Thou hast sent me;' and, lastly, we do here solemnly record our conviction that unity will be most effectually promoted by maintaining the Faith in its 'purity and integrity, as taught in the Holy Scriptures, held by the Primitive Church, summed up in the Creeds, and affirmed by the undisputed General Councils.'"

But after all no argument for the continuity of the Church of England can be stronger than that which is derived from the structure, order, and contents of the Prayer-Book. It contains the Breviarium, in which towards the end of the eleventh century had been inserted all the offices of the canonical hours, called also Portiforium and in England Portuary, the Missale or the service for the Holy Communion, and the Ordinale, which is referred to under the name of the "Pie" in the preface. There were various "Uses" or Prayer-Books in England, known as the Salisbury, the York, the Bangor, and the Hereford Uses, and others. The most celebrated appear to have been the *Portiforium* or Breviary of Sarum, which contained the Daily Services,—the Sarum Missal, which contained the Holy Communion Service,—and the Sarum Manual, a book of occasional

offices. These books of devotion seem to have been compiled by Osmund, Bishop of Salisbury, about the time of the Conquest; and in 1531 a reformed edition of the Sarum Portiforium was reprinted, and shortly afterwards a reformed Missal was published. There were also Primers, which contained in a vulgar tongue large portions of the Service in use amongst the people. In 1536 the Roman Breviary was reformed, and published by a Spanish Bishop, Cardinal Quignonez; and in 1544 Hermann, Archbishop of Cologne, whom the Pope during the early sittings of the Council of Trent deprived,<sup>1</sup> published a reformed ritual.

In 1542 Henry VIII. directed Convocation to consider the revision of the books of devotion then in use in this country. It is probable that the fruit of their labours, as well as the other works to which reference has been made, were laid before the royal visitors appointed by Edward VI. in January 1546-7, and the Committee of Convocation, to whom the preparation of the Prayer-Book of 1549 was intrusted.

The whole Prayer-Book, in fact, with very inconsiderable exceptions, consists of a translation of the ancient liturgies, and especially of the liturgy used by the Western Church. And we learn from the preface to the Prayer-Book that the object was to restore that "godly and decent order of the ancient fathers" which had been broken, and to introduce an order of prayer and reading of Holy Scripture "agreeable to their mind and purpose;" and that all suggested alterations which "secretly struck at some laudable practice of the whole Catholic Church of Christ" were rejected; and that the calendar contained a "table of feasts, vigils, fasts, and days of abstinence," which were in accordance with primitive and Catholic use; while the ornaments of the Church and the vestments of the ministers were such as to present to the people some of the most prominent features of the ancient service, and were for this reason the ground of unceasing attack from the Puritans, and the disciples of the Genevan school. And it is the observation of Mr. Hallam, while speaking of the Roman Catholics, "that it was always held out by our Church, when the object was conciliation, that the liturgy was essentially the same with the mass book." —(*Constitutional History*, ed. 1850, vol. i. p. 86.)

These premises, which I have stated at some length, lead me to the conclusion that no sound argument against the lawfulness of the matters objected to in these articles can be deduced from the mere fact of their identity with the ceremonies in use before the Reformation.

<sup>1</sup> *Istoria del Concil. Trident.*—Sarpi, lib. ii. § 59.



*Argument from Disuse.*

I will next consider the argument founded on the alleged *de facto* disuse, since the Reformation, of the ceremonies or ornaments complained of in these articles.

It assumes this kind of shape :

“If these things were legal they would have been in use ; their non-usage is almost fatal to their claim of legality ; the presumption of law is strongly against them ; and in order to refute that presumption a continuous usage must be established by those who maintain their lawfulness.”

This argument seems to have been in the mind of the Judge of the Consistory of London in *Westerton v. Liddell*, though at the same time he strenuously asserted that no provision of statute or lawful canon could be abrogated by non-user. The doctrine of desuetude he repudiated as unknown to the law of England.

This argument from the long disuse of ornaments and observances recently revived cannot be altogether passed over.

The fact of disuse raises a practical prejudice, if not a legal obstacle, to all such revivals. The consideration of the causes which have induced it has a bearing upon the discussion of the questions which I am to adjudicate.

The argument appears to me to admit of two distinct answers.

In the first place, it proves too much ; for perhaps there is no historical fact more certain than this, namely, that the law derived from the rubrics and canons has never, at any period since the Reformation, been universally and duly obeyed. The proposition is startling, but I think unquestionably true. The instances of disobedience are striking, if not many ; take, as one example, the vestments of the clergy.

The rubric of Edward VI. provides :—

“And here it is to be noted, that such ornaments of the Church, and of the ministers thereof, at all times of their ministration, shall be retained, and be in use, as were in this Church of England, by the authority of Parliament, in the second year of the reign of King Edward the Sixth.”

And the Judicial Committee of the Privy Council, in *Westerton v. Liddell*, most deliberately and emphatically decided that—

“The rubric to the Prayer-Book of January 1st, 1604, adopts the language of the rubric of Elizabeth ; the rubric to the present Prayer-Book adopts the language of the Statute of Elizabeth ; but they all obviously mean the same thing, that the same dresses and the same utensils or articles which were

used under the first Prayer-Book of Edward VI. may still be used." Their Lordships say, "No difficulty will be found in discovering amongst the articles of which the use is there enjoined, ornaments of the Church, as well as ornaments of the ministers. Besides the vestments differing in the different services, the rubric provides for the use of an English Bible," etc.—(Moore's Report, pp. 156, 9.)

The dresses of which the use is prescribed in the first Prayer-Book of Edward VI. are thus ordered:—

"Upon the day, and at the time appointed for the ministration of the Holy Communion, the priest that shall execute the holy ministry shall put upon him the vestures appointed for that ministration; that is to say, a white albe plain, with a vestment or cope."

"And whensoever the bishop shall celebrate the Holy Communion in the Church, or execute any other public ministration, he shall have upon him, beside his rochette, a surplice or albe, and a cope or vestment, and also his pastoral staff in his hand, or else borne or holden by his chaplain."

The canons of 1603 could not alter or affect the positive provisions of a Statute; but, on the supposition that they alone were to be consulted, the use of the surplice in parish churches is distinctly enjoined by them (canon 58). Nevertheless I well recollect that when Bishop Blomfield published his celebrated charge in 1842, the expression therein of his opinion, that the preacher ought to wear the surplice rather than the gown in the morning service, raised a storm of religious controversy and excited feeling upon which a sober-minded man now looks back with surprise and regret. And I cannot but agree with his biographer, that "it will hardly be denied, that the great principle for which Bishop Blomfield contended, that in Divine service all things should be done *decently*, but *in order*, is now acted upon in the Church of England to an extent, which, twenty years ago, would hardly have been expected by men of calm judgment, and which, thirty years ago, would by most have been pronounced impossible."<sup>1</sup>

The same canons enjoined the use of copes in cathedrals (canon 24), a special prayer called the bidding prayer to be used by all ministers before every sermon (canon 55), a passing bell to be tolled for every dying parishioner (canon 67); that "upon every Sunday or Holyday" the minister shall "under pain of suspension and excommunication, for half an hour or more, examine and instruct the youth and ignorant persons in his parish in the Ten Commandments, the Articles of the Belief, and in the Lord's Prayer; and shall diligently hear,

<sup>1</sup> *Memoir of Bishop Blomfield*, vol. ii. p. 64.

instruct, and teach them the Catechism set forth in the Book of Common Prayer" (canon 59); that a particular dress, minutely specified, shall be worn by ecclesiastical persons on a journey (canon 74); that the Litany shall be said or sung wherever appointed by the Prayer-Book, more particularly upon Wednesdays and Fridays, though they be not holydays (canon 15).

The rubric directs that the holy elements shall be placed upon the Table of the Lord at a particular part of the service; but till lately, and before the decision of the Privy Council in favour of the use of the credence table, this rubric was generally disobeyed. The rubric is express in its directions, that "unless the minister be otherwise reasonably hindered," he shall perform daily service; that "the feasts shall be observed," in which category are included all Sundays, and certain feasts and saints' days; and there is also a careful table of the vigils, fasts, and days of abstinence to be observed throughout the year; that "so many as intend to be partakers of the Holy Communion shall signify their names to the curate at least some time the day before." Private baptism, which was only to be allowed for "great cause or necessity," had so generally superseded public baptism, that the late Bishop of London was compelled expressly to forbid his clergy to baptise privately except in cases of necessity; and, indeed, of all these precise orders, of which the catalogue is not exhausted, having for their object the spiritual edification of members of the Church, how very few, till lately, within our own memory, have been obeyed, and how much more common has been the breach than the observance of them.

It is true that Mr. Mackonochie is not charged with any disobedience to the law in these respects; his offence is that of unauthorised addition, of doing too much and not too little in his ministrations in the Church; but I refer to this notorious fact of general disobedience to the law in these respects, because a revived obedience to it, not unnaturally, excites the surprise and sometimes the anger of persons who have been habituated to a more relaxed and less careful system. A compliance with the law has the effect of novelty upon them, and they are apt to consider as illegal not the desuetude of a prescribed usage, but the restoration of it.

This argument of disuse was most strongly urged in *Westerton v. Liddell* as conclusive against the Cross and the Credence Table; and it was truly said that the instances in which any trace of them could be substantiated by evidence, since the Reformation, were very few and inconsiderable,—not half-a-dozen I believe in number, and it was contended that such

disuse amounted to a practical rejection of them by the Church. And this argument prevailed with the Judges of the Consistory of London and of the Arches Court, who accordingly pronounced these things to be unlawful. But it did not avail before the Judicial Committee of the Privy Council, who, looking to their innocent and primitive use, reversed the sentence of these Courts and pronounced them to be lawful.

The mere fact, therefore, that the practice complained of is novel, furnishes by no means an irrefragable argument that it is unlawful, and it can afford, in truth, but little assistance in solving the question whether the practices charged against Mr. Mackonochie are or are not contrary to the law.

In the second place, the alleged disuse or desuetude must be measured by a reference to the history of the institution during the period in which it has prevailed. The questions,—has that institution been during this period in its normal condition? has it been in a state of unconstrained freedom? of undisturbed liberty of action? or has it during this period been from time to time turned aside from its natural course? has it been oscillating between peril and disquiet and the apathy which is so often their reactionary successor? has it manifested, wherever it has been in a state of freedom, peace and vigour, a desire to restore and reserve as much as it could of a lawful inheritance which had been forcibly put in abeyance, and had that desire and endeavour always accompanied a revival of life and energy? These are questions which must be answered before the argument from disuse can be properly estimated. A careful examination of the history of this country, and more especially of that part of it which relates to the Church, affords some explanation of the careless and imperfect compliance with the directions and orders of the Prayer-Book to which I have adverted. To enter at length into this history would far exceed the limits of my present judgment, but I will make a very cursory reference to the principal epochs.

From the reign of Edward VI. to the reign of her present Majesty the intervals during which the Church has been undisturbed by troubles from within or without have been few.

During the short reign of Edward VI. she underwent various trials. Her worship and her ritual were twice dealt with by Parliament, and not only her revenues but the ornaments and treasures within her fabrics were scandalously plundered in order to fill the purses of the corrupt courtiers, of a precocious, well-meaning, but prejudiced and narrow-minded boy, who, during the few years of his reign, was little more than an instrument in the unscrupulous hands of the religious and political factions which surrounded and besieged his throne.

I will borrow the language of Fuller in his Church History of Britain (Book vii. p. 401).

Speaking of the year 1549, this quaint but faithful historian says—

“Come we now to the saddest difference that ever happened in the Church of England, if we consider either the time how long it continued, the eminent persons therein engaged, or the dolefull effects thereby produced. It was about matters of conformity. Alas! that men should have lesse wisdome than locusts; which when sent on God’s errand, ‘did not thrust one another’ (Joel ii. 8), whereas here such shoving, and shouldring, and hoising, and heavings, and justleing, and thronging, betwixt Clergie-men of the highest parts and places. For now nonconformity in the daies of King Edward was conceived, which afterward in the reign of Queen Mary (but beyond sea at Frankford) was born, which in the reign of Queen Elizabeth was nursed and weaned, which under King James grew up a young youth, or tall stripling, but towards the end of King Charles his reign, shot up to the full strength and stature of a man, able, not only to coap with, but conquer the hierarchie its adversary.”

Speaking of the year 1552, the same historian says (p. 417)—

“Lately information was given to the king’s counsell, that much costly furniture, which was embezelled, might very seasonably (such the king’s present occasions) and profitably be recovered. For private men’s halls were hung with altarcloathes, their tables and beds covered with copes, instead of carpets and coverlets. Many drank at their daily meals in chalices, and no wonder if in proportion it came to the share of their horses to be watered in rich coffins of marble. And, as if first laying of hands upon them were sufficient title unto them, seizing on them was generally the price they had payed for them. Now although four years were elapsed since the destruction of colledges and chanteries, and much of the best Church ornaments was transported beyond the seas, yet the Privie Council thought this very gleaning in the stubble, would richly be worth the while, and that, on strict inquisition, they should retrive much plate in specie and more money for moderate fines on offenders herein. Besides, whereas parish churches had still many rich ornaments left in the custody of their wardens, they resolved to convert what was superfluous or superstitious to the king’s use. To which purpose commissions were issued out to some select persons in every county, etc.”

It was probably a like spirit of avarice which, using the honest fanaticism of the Geneva divines as its instrument, dictated the destruction of all the ancient service books as well as

images, by the Order in Council of December 24, 1549, and the 3d and 4th of Edw. VI. c. 10.

The bindings and cases of these books of devotion were often studded with gems, and of great value; and the images, from their costly material, as well as their careful execution, offered a tempting prey to the spoiler.

During the succeeding reign of Mary, the Church was altogether driven from her sanctuary. Elizabeth, indeed, exerted the great sagacity which she possessed in laying deep and wide the foundations of the establishment to which the Church was restored. But the foreign element, which the persecutions of Mary had much increased, began to ferment, and to wage a ceaseless war with the principles upon which the Church had been reformed, and though the masculine sense and vigorous hand of this great Queen restrained the attacks of the innovators from Geneva and Germany, she was obliged to tolerate a practical laxity in all that related to the ritual of the Church, in order to secure the maintenance of the Catholic doctrine.

It cannot be doubted, from her resolute retention of the ornaments of her Chapel, including lights and a crucifix, from her avowed belief in the Real Presence, as well as from her language and conduct, that her desire and intention were to embrace the Lutheran and the Romanist within the wide and liberal pale of the National Church.<sup>1</sup>

And I may observe in passing, that it was in the same spirit of liberality and comprehensiveness that our Bishops, in 1661, said, "It was the wisdom of our Reformers to draw up such a liturgie as neither Romanist nor Protestant could justly except against; and therefore, as the first never charged it with any positive errors, but only the want of something they conceived necessary, so it was never found fault with by those to whom the name of Protestants most properly belongs, those that profess the Augustine Confession; and for those who unlawfully and sinfully brought it into dislike with some people, to urge the present state of affairs as an argument why the book should be altered to give them satisfaction, and so that they should take advantage of their own unwarrantable acts, is not reasonable." —(*Lathbury's History of the Book of Common Prayer*, chap. xiii. p. 324.)

Bishop Sandys writes to Archbishop Parker: "The last book of service is gone through with a proviso to retain the orna-

<sup>1</sup> The rubric, commonly called the black rubric, after the Communion, in the second Prayer-Book of Edward VI., explained that no adoration was due to the *real* and essential presence. Elizabeth struck it out. The rubric reappears in the last Prayer-Book with the very material alteration of "or unto any *corporal* presence of Christ's natural flesh or blood."

ments which were used in the 1st and 2nd year of King Edward until it please the Queen to take further order for these. Our gloss upon this text is that we shall not be forced to use them, but that others in the meantime shall not convey them away, but that they may remain for the Queen.”—(Strype, *Ann.*, vol. i. part 1, p. 122; Burnet, vol. ii. part 2, p. 465.)

The Puritans rejected with scorn the toleration which the Queen and Walsingham, with a rare wisdom unknown to their age, were ready to extend to them. Bishop Madox cites a declaration of this party as follows:—

“As for you, dear brethren, whom God hath called in to the brunte of the battle, the Lord keep you constant, that ye yield neither to toleration, neither to any other subtil persuasions of dispensations or licences, which were to fortify their Romish practices; but, as you fight the Lord’s fight, be valiant. The matter is not so small as the world doth take it; it will appear, before all be ended, what an hard thing it is to cut off the rags of the Hydra of Rome. Let us not make the heritage of God as a bird of many colours, holding of divers religions; but rather let us take away, if we can, the names, memories, and all monuments of Popery.” The Bishop goes on to say, “Who were meant by this description in the year 1570 needs no explanation. The bishops and clergy of the Church of England were then constantly represented as bearing the names and supporting the monuments of Popery. Agreeably to this exhortation of yielding to no toleration, nor accepting any indulgence, in all their petitions, admonitions, supplications, etc., we see nothing of a toleration for themselves only, but their single request or command, in whichever style they speak, is the absolute overthrow of the established Government and worship, and the introduction of their own with penalties, even sharp punishments to be inflicted upon those who did not comply with it.”—(P. 287.)

In 1597 Hooker wrote the fifth book of his *Ecclesiastical Polity*, in which he vindicated the rites and ceremonies of the Church of England against the attacks of the Puritans, and pointed out with a prophetic spirit the confusion which would ensue “if it should be free for men to reprove, to disgrace, to reject, at their own liberty, what they see done and practised according to order set down.”—(Book v. c. 10.)

In the reign of Elizabeth’s successor, the Hampton Court Conference and the canons of 1603, aided by the disposition of James, and the great power of his prerogative which then rested on the Statute of Elizabeth, and the general tranquillity of the country, enabled the Church to put in force, in some degree at least, the provisions of her ritual.

The leaven of the Puritans, however, was at work, and is well illustrated by the language which they held respecting our Prayer-Book at this time. I refer again to Bishop Madox (p. 73):—

“But Mr. Neal tells us it would have obviated many objections if the Committee had thrown aside the Mass Book and composed an uniform service in the language of Scripture.” This was an objection frequently made by the Puritans, with great variety of very severe and very coarse expressions. Thus in their first admonition to the Parliament, “Remove (say they, in great warmth) homilies, articles, injunctions, and that pre-script order of service made out of the Mass Book.” In their second admonition to the Parliament they express themselves after this manner: “We must needs say as followeth, that this book is an imperfect book, culled and picked out of that Popish dunghill, the Portuise and Mass Book, full of all abominations.” Another of them is pleased to deliver his opinion in the following words: “The whole form of the Church service is borrowed from the Papists, pieced and patched, without reason or order of edification.” Their famous leader, Mr. Cartwright, likewise declares his and his brethren’s displeasure upon this head: “Before I come to speak of prayers (says he) I will treat of the faults that are committed almost throughout the whole liturgy and service of the Church of England, whereof one is that which is often objected by the authors of the admonition, that the form of it is taken from the Church of Antichrist.”

During the early part of the reign of Charles I., the advance in ritual restoration was rapid, and was accompanied by great imprudence and little knowledge of, or attention to, the actual circumstances of the State. The Puritan religious element allied itself with the political element; and so it came to pass that a literal and strictly legal compliance with the rubric formed no insignificant part of the impeachment which brought about the judicial murder of Archbishop Laud, one of the most distinguished writers against the pretensions of the Papacy.<sup>1</sup>

<sup>1</sup> Whitelock. (*Memorials of the English Affairs*. Folio. Tonson, 1732.)

Anno 1643, p. 75.—The Commons “ordered copes and surplices to be taken away out of all Churches.”

Anno 1644, p. 88.—Laud on his trial; objected to him “that he caused superstitious pictures, images, and crucifixes to be set up in many churches, and in the King’s chapel caused a popish crucifix to be hung up over the altar upon every Good Friday, which had not been there before since the reign of Queen Mary.” . . . “and his consecrating of churches, tapers, and candlesticks, organs, and particular prayers for those purposes.”

The Commons “ordered the taking away of all such pictures, images, and crucifixes in the King’s chapel at Whitehall.”

Page 91.—“The Earl of Newcastle desired a treaty, which was admitted, and he demanded to march away with bag and baggage, etc., and that all



Then was the wisdom, as well as the piety, of the principles upon which our Church was reformed, demonstrated. In Protestant Germany and in Geneva, where the Apostolical order and primitive usages had been, from whatever causes, neglected or abandoned, and in this kingdom during the troubles of the civil wars, almost every variety of sect which the vanity, presumption, and ignorance of man, under the influence of unchecked religious excitement, could devise, sprang into existence.

All these,

“Who thought religion was intended  
For nothing else but to be mended,”

and whom the poem of Butler has rescued from oblivion, have furnished to Rome her strongest weapon for the defence of abuses equally without warrant from Scripture and tradition, and for attack upon the purer branches of the Catholic Church.

At the Restoration, the Church, with the full and hearty consent of the people, restored, with few exceptions, the primitive ritual, of which Cranmer and Ridley, the chiefs of a noble army of martyrs, had approved.

But the impoverished condition of the clergy, the dilapidated state of the desecrated churches, the profligacy (a reaction from Puritanism) and poverty of the landowners, combined to prevent that moderate amount of ritual development which a strict obedience to the direction of the rubric required.

Lord Macaulay's picture of the miserable status of the parochial clergy during the seventeenth century (*History of England*, vol. i. p. 327) is probably painted in too dark colours; but there is no doubt that it was one highly unfavourable to ritual ornament either in the dress of the priest or in the furniture of the church.

It was seldom that men connected with noble families entered into Holy Orders, and the adoption of that profession by Herbert was a remarkable phenomenon of the time.

Then came the struggle of James II., by God's good providence defeated, to reimpose the yoke of Rome upon the liberties of our Church.

within the town should have liberty of conscience, the prebends to enjoy their places, to have common prayer, organs, copes, surplices, hoods, crosses, etc.”

“These things were denied by the Parliament,” etc. This was at York, June 1644.

“August 1644, p. 98.—Col. Middleton sent up to the Parliament from Sarum many copes, surplices, tippets, hoods, plate, and the picture of the Virgin Mary taken in the Minster there; other relics being divided among the soldiers.”

The very learned Cave, in his Epistle Dedicatory to the History of the Fathers of the Church in 1683, observes,—

“The Church of England, incomparably the best part of the Catholic Church at this day visible upon earth, is miserably torn in pieces, hated and maligned; secretly undermined by enemies from abroad, and openly assaulted by pretended friends at home. *Altar* is erected against *altar*, and private congregations kept up in opposition to the publick constitution. Her liturgy and forms of Divine administration derided, odiously traduced, and run down with nothing but noise and clamour. Her rites and institutions, though the same that were used in the primitive ages of Christianity, decried as antichristian. Her discipline and authority weakened, and, by the obstinacy and perverseness of men, made ineffectual.”

The great defection of the non-jurors, who were much attached to ritual observances, among whom were some of the most pious and learned prelates of the realm, at the beginning of William III.'s reign, must, I think, have been unfavourable to ritual observances in the Church Establishment which they had left.<sup>1</sup>

As we enter on the eighteenth century we trace the gradual increase of disobedience to all directions of the Church which had for their object not merely the ornament but the decency of Divine worship.

In 1710 good Bishop Fleetwood, in his charge to his clergy, observed, “that unless the good public spirit of building, repairing, and adorning churches prevails a great deal more among us, and be more encouraged, an hundred years will bring to the ground an huge number of our churches.”

During the reigns of the two first Georges, and the beginning of the third, a decay of piety and learning, with brilliant exceptions indeed, went hand in hand with slovenliness of ritual and habitual indifference to rubrical injunctions upon this subject; and in 1751, that is, forty years afterwards, not many months before his death, that great prelate, Bishop Butler, whose “Divine Philosophy” has charmed educated men of all creeds,

<sup>1</sup> Mr. Hallam observes: “Eight Bishops, including the Primate and several of those who had been foremost in the defence of the Church during the late reign, with about four hundred Clergy, some of them highly distinguished, chose the more honourable course of refusing the new oaths; and thus began the schism of the Non-jurors, more mischievous in its commencement than its continuance, and not so dangerous to the government of William III. and George I. as the false submission of less sincere men.” Having alleged reasons in favour of the imposition of the oath, he adds in a note: “Yet the effect of this expulsion was highly unfavourable to the new government; and it required all the influence of a latitudinarian school of Divinity, led by Locke, which was very strong among the laity under William, to counteract it.”—(*Constit. Hist.*, vol. ii. p. 273.)

referring to these words of Bishop Fleetwood, uttered this lamentation, "This excellent prelate made this observation forty years ago; and no one, I believe, will imagine that the good spirit he has recommended prevails more at present than it did then."

In another part of the same charge he says: "Nor does the want of religion in the generality of the common people appear owing to a speculative disbelief or denial of it, but chiefly owing to thoughtlessness and the common temptations of life. Your chief business, therefore, is to endeavour to beget a practical sense of it upon their hearts as what they acknowledge their belief of, and profess they ought to conform themselves to. And this is to be done by keeping up, as we are able, the form and face of religion with decency and reverence, and in such a degree as to bring the thoughts of religion often to their minds; and then endeavour to make this form more and more subservient to promote the reality and power of it. The form of religion may indeed be where there is little of the thing itself, but the thing itself cannot be preserved amongst mankind without the form. . . .

"That which men have accounted religion in the several countries of the world, generally speaking, has had a great and conspicuous part in all public appearances, and the face of it has been kept up with great reverence throughout all ranks, from the highest to the lowest; not only upon occasional solemnities, but also in the daily course of behaviour. In the heathen world, their superstition was the chief subject of statuary, sculpture, painting, and poetry. It mixed itself with business, civil forms, diversions, domestic entertainments, and every part of common life. The Mahometans are obliged to short devotions five times between morning and evening. In Roman Catholic countries people cannot pass a day without having religion recalled to their thoughts, by some or other memorial of it, by some ceremony of public religious form occurring on their way; beside their frequent holidays, the short prayers they are daily called to, and the occasional devotions enjoined by their confessors. By these means their superstition sinks deep into the minds of the people, and their religion also into the minds of such among them as are serious and well-disposed. Our reformers, considering that some of these observances were in themselves wrong and superstitious, and others of them made subservient to the purposes of superstition, abolished them, reduced their form of religion to great simplicity, and enjoined no more particular rules, nor left anything more of what was external in religion, than what was in a manner necessary to preserve a sense of religion itself upon the minds of the people.

But a great part of this is neglected by the generality amongst us; for instance, the service of the Church, not only upon common days, but also upon Saints' days, and several other things, might be mentioned. Thus they have no customary admonition, no public call to recollect the thoughts of God and religion from one Sunday to another."

"Indeed in most ages of the Church the care of reasonable men has been, as there has been for the most part occasion, to draw the people off from laying too great weight upon external things, upon formal acts of piety. But the state of matters is quite changed now with us. These things are neglected to a degree which is and cannot but be attended with a decay of all that is good. It is highly seasonable now to instruct the people in the importance of external religion.

"And doubtless under this head must come into consideration a proper regard to the structures which are consecrated to the service of God. In the present turn of the age one may observe a wonderful frugality in everything which has respect to religion, and extravagance in everything else. But amidst the appearance of opulence and improvement in all common things, which are now seen in most places, it would be hard to find a reason why these monuments of ancient piety should not be preserved in their original beauty and magnificence. But in the least opulent places they must be preserved in becoming repair, and everything relating to the Divine service be, however, decent and clean, otherwise we shall vilify the face of religion, whilst we keep it up. All this is, indeed, principally the duty of others; yours is to press strongly upon them what is their duty in this respect, and admonish them of it often, if they are negligent."—(*Works*, vol. ii. pp. 315, 317.)

Then followed the great schism of which the pious Wesley was unwillingly and unwittingly the leader, but of which the apathy and sloth of the Church was the true cause. A resurrection of Christian life was afterwards brought about by a school in the Church which, though with little knowledge of or care for ecclesiastical traditions or primitive usage, yet almost within the memory of the present generation represented the earnestness and energy of the establishment. Both these events were unfavourable to the maintenance of ritual observances.

The piety of this school is not incompatible with superior erudition and historical knowledge in persons more susceptible to the influences of external rites and ceremonies. A school has sprung up in our memory, which, having first restored the true ecclesiastical architecture in our churches, proceeded to

inquire into the real meaning of the rubrical directions in our Prayer-Book, examined them by the light of history and tradition, and arrived at the conclusion that a bare and unattractive service, sordid furniture, and the absence of all that was beautiful in art in the Temple of God, was not a necessary condition of a Church which had thrown off the corruptions and novelties of Rome. The Prayer-Book referred them to the custom and usage which prevailed in the second year of Edward the Sixth. In the Lutheran and Swedish services they found crucifixes, incense, lighted candles, and gorgeous dresses. They thought it obvious, therefore, that no necessary connection subsisted between these ornaments and usages of primitive antiquity, and the medieval and false claims of the Papacy.

Recognising the spirit of this movement in the Church, the late Bishop of London, in his charge in 1842, used this emphatic language :—

“Every clergyman is bound by the plainest obligations of duty to obey the directions of the rubric. For conforming to them, in every particular, he needs no other authority than that of the rubric itself. We ought not to be deterred from a scrupulous observance of the rites and customs prescribed or sanctioned by our Church by a dread of being thought too careful about the externals of religion. If we are not to go *beyond* her ritual, at least we ought not to fall *short* of it; nor to make her public services less frequent, nor more naked and inexpressive, than she intends them to be.”

Again he says—

“An honest endeavour to carry out the Church’s intentions, in every part of public worship, ought not to be stigmatised as Popish or superstitious. If it be singular, it is such a singularity as should be cured, not by *one* person’s desisting from it, but by *all* taking it up. When I have been asked whether I approved of certain changes in the mode of celebrating divine service, which were spoken of as novelties, but which were in fact nothing more than a return to the anciently established order of the Church, my answer has been, far from questioning the *right* of the clergy to observe the rubric in every particular, I know it to be their *duty*; and the only doubt is, how far are *we* justified in not *enforcing* such observance in every instance.”—(Pp. 30, 31.)

Bishop Stanley, in his charge in 1845, says, “Speaking of the decorations of churches, I am aware of the reply; they pander, it is said, to idolatry, and may again become the object of superstitious worship. In a former age, when the minds of men were under the control of a superstitious and designing priesthood, such reasoning might have weight, but I must con-

fess I cannot now hear it without mingled sentiments of pain and surprise." . . . "We need not," he concludes, "like the Puritans of old, banish the influence of art from the sphere of religion, and return to that rude spirit which went forth as the destroyer of all that was beautiful, glorying in its barbarous mutilations."

I will conclude my observations on this subject in the words of the oldest and certainly not the least able and learned of our prelates. In 1851 the Bishop of Exeter said (from Appendix A to the report of the Ritual Commission, page 122), "Let me make one general remark. Where the congregation consists mainly of the poorest orders, there we commonly observe a great love of a majestic and even elaborate service. The ornaments of their church; the storied glass; the painted, and it may be gilded, walls; the table of the Lord elevated above the rest, and decked with sober yet costly furniture; the pealing organ; the chanted psalms; the surpliced choristers; the solemnity of the whole ritual—gladdens while it elevates their minds; they recognise in it their own high privilege as Christians, and rejoice to find themselves equal participants with their richest neighbours in the homage thus paid to the common Lord and Father of all. In truth, when we consider the little which the poor man has to delight his heart and touch his imagination in his own squalid home, we ought to rejoice that he can find enjoyment in the house of prayer, his Father's house. For this reason few occurrences have affected me more than the lamentations of the poor worshippers, in one of the districts of the metropolis, when they saw, or thought they saw, at the dictation of a riotous and lawless mob of strangers, the approaching surrender of the ritual which they loved, and which was their weekly, to many among them the daily, solace of that poverty to which the providence of God had consigned them."

It was in this spirit that the Church of St. Alban's was, we know, built. In this spirit we must all hope that its services have been conducted. But it remains to be seen whether they have or have not gone beyond those bounds of ritual observance which the law of our Church has set.

### *General Principles for the Construction of Rubrics.*

In the foregoing observations I have dealt with two heads of the arguments urged by the counsel for the promoter, which for the sake of clearness I will repeat; namely,—

That these particular practices are by necessary implication

prohibited, inasmuch as they are connected with Roman or Popish doctrines.

And that as such they have, as a matter of fact, been disused ever since the Reformation.

I am of opinion that neither of these arguments can avail to prove that the practices complained of are illegal. I have now to consider the two other heads of their argument; namely,—

That, as by these practices a new rite or ceremony has been added to those which are prescribed by the Statutes of Uniformity, such practices are unlawful.

And that these particular additions are expressly prohibited.

The due consideration of these arguments renders it expedient that I should previously determine upon what principles the rubrical directions of the Prayer-Book should be construed.

It has been argued on the one side that the legal effect of express directions in the rubric is to shut out every rite, ceremony, utensil, or ornament which is not the subject of such express provision, or by necessary implication directly subsidiary to it. It has been argued, on the other side, that every ancient Catholic rite, ceremony, utensil, or ornament which is not the subject of an express prohibition is lawful. I am not disposed to assent to either of these propositions in their full latitude.

I believe the following rules to be well founded in principle, reason, and law, and I shall endeavour to guide myself by them; namely, that what is expressly prohibited is prohibited altogether, and may not be evaded by any contrivance which, under a different name or appearance, attains the same end; that whatever is expressly ordered may not be evaded by an illusory or partial compliance; that whatever is subsidiary to what is ordered, and whatever being in itself decent and proper in accordance with primitive and catholic use, and which is not by any fair construction necessarily connected with those Roman novelties which the Church “cut away and clean rejected” (to use the language of the Prayer-Book) at the Reformation, is, under restrictions to be mentioned, lawful.

There are, in other words, three categories of these things,

- (1.) Things lawful and ordered.
- (2.) Things unlawful and prohibited.
- (3.) Things neither ordered nor prohibited expressly, or by implication, but the doing or use of which must be governed by the living discretion of some person in authority.

*Construction of Rubric as to the Discretion of the Ordinary.*

I wish to say a word first upon this last category.

The compilers of our Prayer-Book, and the Legislature which clothed it with the authority of a Statute, were well aware that such a living discretion was indispensably necessary for the government of the Church in the performance of her Divine service, as well as in the due discharge of her other functions.

In the preface concerning the service of the Church, it is stated that "nothing can be so plainly set forth but doubts may arise in the use and practice of the same;" accordingly the first and every subsequent Prayer-Book, including the present one, provided what must have been intended and believed to be a sufficient remedy for the evil which was thus contemplated as of possible, perhaps probable, occurrence.

It is important to notice the nature and character of the remedy proposed. It was one in perfect accordance with the principle upon which the order and discipline of the Church had, in obedience to the will of Christ, been founded by his Apostles; a principle which recognised the apostolical order of bishops as necessary for the due constitution of the Church; and in perfect accordance with the great principle of the Reformation of the Church in England, that a duly consecrated bishop had a Divine authority, perfect and complete in itself, and wholly independent of the previous consent or subsequent ratification of that authority by the Pope.

The remedy was as follows: "to appease all such diversity (if any arise), and for the resolution of all doubts concerning the manner how to understand, do, and execute the things contained in this book, the parties that so doubt or diversely take anything shall always resort to the bishop of the diocese, who by his discretion shall take order for the quieting and appeasing of the same; so that the same order be not contrary to anything contained in this book, and if the bishop of the diocese be in doubt, then he may send for the resolution thereof to the archbishop."

The words of this order deserve the closest attention; it provides "for the resolution of all doubts concerning the manner how to understand, do, and execute the things contained in this book;" terms which certainly appear to comprehend every conceivable difficulty or doubt which could possibly arise. The authority which is to resolve these doubts and remove these difficulties, is that officer in whose hands previously to the statutory enactment of any Prayer-Book, the Church had placed a supreme command over all that relates



to her ritual. "The parties that so doubt or diversely take anything shall always resort to the bishop of the diocese." The mode of resolution is not stated, but the language is such as to render it improbable that any formal proceedings in a court were contemplated. "The bishop by his discretion shall take order for the quieting or appeasing of the same,"—large, and, I think, wise expressions, making reference to a living authority, such as the nature of the thing seems to demand, and the Church had always recognised as having the power to deal with the circumstances of each case as they arose. Was there any limitation to this authority?—One only, it appears; that his order "shall not be *contrary* to anything contained in this book;" leaving, therefore, in my judgment, within the domain of his authority that third category to which I have referred, namely, "things neither ordered nor prohibited expressly or by implication."

Was there any provision for controlling the exercise of this discretion?—Yes, a provision not inserted, it is true, in the first Prayer-Book, but equally in accordance with the discipline of the Catholic Church and with the denial of papal pretension,—the provision "that if the bishop be in doubt he may send for the resolution thereof to the archbishop."

Some construction must be placed upon this order. There are but three possible constructions which occur to my mind: one, that the order merely means that the minister or "party" may quiet his own conscience by having recourse to the private advice of the Ordinary, which advice, when given, he is conscientiously bound to follow; a second construction is, that the order contemplates formal proceedings in the ecclesiastical courts of the diocese and the province; the third is, that which I have suggested.

It is certainly remarkable that as far as I am aware this order has never yet received any judicial interpretation. I remember very well arguing before a very learned ecclesiastical judge, Sir Herbert Jenner Fust, in "the Stone Altar case" (it was brought into the Court of Arches by appeal from the sentence of the Court of Ely, which Court had affirmed the legality of the stone altar), that the question was one to be decided according to the discretion of the Ordinary, according to this order; and, in his judgment, Sir H. J. Fust said, "After much consideration now given, I am of opinion the matter is *not* one of discretion but of law. Were it otherwise, I should be desirous of consulting the wish of the parish."—(1 Rob. Eccl., p. 255). It was clearly, therefore, the opinion of Sir H. J. Fust, who was perfectly conversant with ecclesiastical law and practice, that this order was not to be treated as a dead

letter, although, after much reflection, he was of opinion the questions as to the material and position of the altar-table did not come within its purview. The structure of a stone altar he conceived to be "contrary" to the provisions of the Prayer-Book. And in *Westerton v. Liddell*, the Lords of the Privy Council, after deciding that it was lawful to place upon the holy table cloths of various colours, observed, "whether the cloths so used are suitable or not is a matter to be left to the discretion of the Ordinary."—(Moore's Report, p. 188.)

There is a difficulty arising out of this construction, from the consideration of which I must not shrink. It may be said that the bishop, when he had taken order for appeasing the doubt, would have no legal means of enforcing that order, and that for the purpose of such enforcement he must have recourse to his court. But it appears to me that, on the supposition that the matter was one on which he could exercise his discretion, he could clothe his order with the character of a monition, and that a disobedience to such monition would subject the person disobeying to the penalties of contumacy.

I should observe that the canon law unquestionably placed in the hands of the bishop the authority to govern all questions of ritual.

"Et quidem" (Van Espen says) "quia dispares diversarum nationum mores et ingenia diversos ritus et cæremonias, ut in politicis ita in ecclesiasticis exigunt, hinc in ritibus magna ecclesiarum varietas; præsertim quia nullo extante de his Christi vel Apostolorum præcepto, libera potestas episcopis relicta erat, id sentiendi et decernendi quod unicuique salva fide magis expediens videbatur."

And citing the decree of a synod he says: "Novæ cæremoniæ nullæ in ecclesiis recipiantur sine episcopi judicio."—(*Jus Eccles. Univ.*, pars ii. tit. v. cap. ii. §§ 15, 24, tom. i. pp. 411, 412.)

Upon this construction of this rubrical order, it will be my duty to consider whether any of the charges preferred against Mr. Mackonochie ought to have been dealt with by the discretion of the Ordinary, and not to have been made the subject of a criminal proceeding against him in this or in any other Court.

### *Construction of Rubrics generally.*

With respect to the two other categories of rubrics, namely, those which relate to things lawful and ordered, and things unlawful and prohibited, there is a question *in limine* which must be considered. Is there a *common law* of the Church unwritten, living by usage, though partly expressed, perhaps, by judicial decisions; but still more, to use a common expres-

sion, taken for granted by all authorities in Church and State—filling up the void of positive provision in statute or formulary—a necessary part of an organised religious system and establishment, rendering the practical working of it possible, and, on the whole, harmonious?

That there has been such a usage in the Church at large, from its earliest foundation, is certain. "We know no such customs, neither we nor the churches of God," was the language which we learn from inspired authority she used as her shield against the earliest assaults upon her integrity. "Let the ancient customs prevail" was the maxim, fatal to the medieval and modern pretensions of Rome, which the Church enunciated in her earliest œcumenical council. The canon law of the Western Church fully recognises custom and usages as a distinct source of ecclesiastical jurisprudence. Was the branch of this Church, which the constitution and the legislature have established in this kingdom devoid of this subsidiary aid to her discipline and government?

In the case of *Willson v. M'Math* (3 Phillimore, 67) a very curious question was raised, whether the minister, as such, has a right to preside at a vestry meeting.

Sir John Nicholl, the Official Principal of the Archbishop of Canterbury, observed: "The case is said to be a new one, so far as regards any *express* law, or any judicial decision on the subject. There is no statute, no canon, no reported judgment, either expressly affirming or expressly negating the right. It nevertheless may exist as a part of the common law of the land, as a part of the *lex non scripta*, which is of binding authority, as much in the ecclesiastical as in the temporal Courts. Indeed, the whole canon law rests for its authority in this country upon received usage; it is not binding here *proprio vigore*. Moreover, this Court upon many points is governed, in the absence of express statute or canon, by the *jus tacito et illiterato hominum consensu et moribus expressum*."

"It is true that generally the existence of this *jus non scriptum* is ascertained by reports of adjudged cases; but it may be proved by other means: it may be proved by public notoriety, or be deducible from principles, and analogy, or be shown by legislative recognitions. Published reports of the decisions of the Ecclesiastical Courts (with one very recent exception) do not exist; and if they did, yet the particular right in dispute may never have been so much as doubted or questioned before."

Upon this principle, in the time of James I., the King's Bench refused to prohibit the Ordinary from compelling a woman to be churched in a veil, because it was certified by

divers bishops to be the common custom of the Church of England.<sup>1</sup>

There is, therefore, a common law of the Church which runs by the side of the statute law, and which must assist in the construction of it.

It is often said that a rubric should be construed on the same principles as an Act of Parliament; but admitting this to be so, it is obvious that there are peculiar difficulties incident to the construction of a rubric which seldom, or in a much less degree, beset the construction of an ordinary statute. And it will appear from what has been already said, that the right understanding of the rules supplied by the rubric for the regulation of the services may often require a reference to the sources not only of historical, but to a certain extent theological knowledge.

There is one important rule applicable to the construction of all instruments, namely, that the construer should endeavour to place himself in the position of the framer of the instrument, and to gather from all the circumstances which surrounded him at the time when he framed it, and from the context of other portions of the instrument, what the real meaning and intention was, if the language which he has used have left that meaning and intention doubtful or obscure.

In the case of *Escott v. Mastin* (4 Moore's P. C. Reports, p. 104), in which a question as to the lawfulness of baptism, administered by a layman with water and the invocation of the Trinity, was mooted, the Lords of the Privy Council observed as follows:—

“The 68th canon being that upon which this proceeding is grounded, it is necessary to consider what the law was at the date of the canon, the year 1603. Without distinctly ascertaining this, we cannot satisfactorily determine what change the rubric of 1661, adopted into the 13th and 14th Charles II. cap. 4, made, and in what state it left the law on this head; because it is very possible that the same enactment of a statute, or the same direction in a rubric, bearing one meaning, may receive one construction when it deals for the first time with a given subject-matter, and have another meaning and construction when it deals with a matter that has already been made the subject of enactment or direction; and this is most specially the case where the posterior enactment or direction deals with the matter without making any reference to the prior enactment or direction. Still more it is necessary to note the original state of the law, when it is the common law that comes in question, as well as the statute.” . . .

<sup>1</sup> Vin. Abr. 17, p. 231, tit. “Prerogative of the King.” “Ordinary and power of the Ordinary.”

"The words are plainly directory, and do not amount to an imperative alteration of the rule then subsisting. If lay baptism was valid before the new rubric of 1661, there is nothing in that rubric to invalidate it. Generally speaking, where anything is established by statutory provisions, the enactment of a new provision must clearly indicate an intention to abrogate the old, else both will be understood to stand together if they may. But, more especially, where the common law is to be changed—and, most especially, the common law which a statutory provision had recognised and enforced—the intention of any new enactment to abrogate it must be plain to exclude a construction by which both may stand together. This principle, which is plainly founded in reason and common sense, has been largely sanctioned by authority. The distinction which Lord Coke takes in one place between affirmative and negative words, giving more effect to the latter (Coke, Littleton, 115, a) has sometimes been denied, at least doubted (W. Jones, 270, Lovelace's case, before the Windsor Forest Court, in 1632, in which there is a *dictum* of Lord Chief-Justice Richardson), Mr. Hargrave thinks upon a misapprehension (Note 154). But the rule which is laid down in 2d *Inst.*, 200, has been adopted by all the authorities, that 'a statute made in the affirmative, without any negative expressed or implied, doth not take away the common law.' So Comyn's *Digest*, Parliament, R. 23; and he cites the case *De Jure Ecclesiastico*, in 5th Rep. 5, b, which lays down the rule in terms."

Let me apply this rule to the subject before me. The first Prayer-Book of Edward VI. contains only one prohibition, the Elevation of the Blessed Sacrament; but it contains various directions respecting the articles to be used in the administration of the Holy Communion. It has been pointed out that the enumeration of these articles could not be exhaustive, inasmuch as the indispensable article of "a fair linen cloth" is omitted from it.

The argument is, I think, valid; the officiating priest must have supplied this article, and the legislature must have intended him to supply it.

He must have looked to an unwritten *use*, the foundation of a common law for the Church, not less than for the State.

Just as much as it must have intended by the rubric in our present Prayer-Book: "The priest shall then place upon the table so much bread and wine as he shall think sufficient," that there should be a table or place from which the elements should be then brought; and therefore the Judicial Committee of the Privy Council, reversing the sentence of the Consistory of London and the Court of Arches, decided that the Credence

Table, which supplied this want, was a lawful ornament. Those who compiled the first Prayer-Book of Edward VI. were not inventing a ritual for the first time, but were constructing one from the various service-books, some English, and some foreign, which they had before them. This ritual was to be placed in the hands of persons conversant with the older service-books; and it seems highly unreasonable to suppose that it was not competent to the priest to supply any accidental omission in the new ritual by a reference to the previously existing usage and practice. In the same way, in the Sarum Missal no mention is to be found of the two lights to be placed upon the altar, but there is no doubt that the constitution which ordered those two lights was legally binding upon, and must have been a part of the furniture of, those churches which adopted the use of Sarum, at least in the province of Canterbury. Another illustration is furnished by the very remarkable fact that the second Prayer-Book of Edward VI. omitted all reference to the manual acts, ordered in the first and last Prayer-Book, attending the consecration of the Holy Elements; and that during the whole period which elapsed between the date of the second Prayer-Book in 1552 and that of the present Prayer-Book in 1661, the officiating priest was left without any direction upon this subject in the Prayer-Book which he was to use. Now, one of two consequences must follow: either the cup was never taken in the hand, the bread never broken, as at present, or these manual acts were done without any specific order in the Prayer-Book, as a matter of recognised usage and custom. No proof has been laid before me, and I can find none, as to the omission of these necessary acts during a period of more than a century, and I think the inference that they must have been still practised is reasonable and sound.

And in this opinion I am strengthened by observing that at the Savoy Conference the dissenters objected, "that the manner of the consecrating of the elements is not here" (*i.e.* in the consecration prayer) "explicite and distinct enough, and the minister's breaking of the bread is not so much as mentioned." The bishops replied by conceding that the manner of consecrating the elements be made "more explicit and express," which was the origin of our present rubric.—(*Cardwell, Conferences*, pp. 321, 363.)

The opinion of Bishop Cosin (vol. v. p. 65, ed. 1855), a high authority upon this subject, appears to me sound. "The book" (he says) "does not everywhere enjoin and prescribe every little order that should be said or done, but takes it for granted that people are acquainted with such common and things

already used as such. Let the Puritans then here give over their endless cavils, and let ancient custom prevail, the thing which our Church chiefly intended in the review of this service." This reasoning, therefore, brings me to the conclusion, that from the mere silence of the rubric a positive prohibition cannot in all cases be inferred.

Something more is required to render the article supplied illegal. For instance, the mention of the article in a former Prayer-Book, and the omission of it in the present, may furnish a presumption that it was intentionally rejected, even when it be in itself innocent, or apparently expedient. Or the article must have, as has been already observed, some necessary connection with a use inconsistent with the principles upon which the formularies of the Church are founded.

I must repeat that the rubrics with respect to decorations and furniture of the church are not exhaustive. This point has been decided by the Judicial Committee of the Privy Council. They allowed on this principle the use of the cross and the credence table and the various coloured clothes for the Holy Table. They allowed also the use of a moveable ledge for the purpose of holding candlesticks upon the Holy Table. The question came before their Lordships as a corollary to their principal decision in *Westerton v. Liddell*. It was contended that the monition of the Court with respect to St. Barnabas Church had not been obeyed as to the Holy Table or as to the cross.

The act on petition alleged, that the monition was still in part uncomplied with in the following particulars:—First, that the metal cross which was standing in the church or chapel, on or attached to the super-altar, on the stone altar, which formerly stood therein prior to the delivery of the judgment of the Judicial Committee on the 21st of March 1857, was then placed on the sill of the great eastern window of the church or chapel-of-ease of Saint Barnabas, above the table then used as a Communion Table in the church or chapel. Second, that the table which had been substituted in the church or chapel for a stone altar which formerly stood therein was not a flat table, but had an elevation or structure placed thereon, so as to resemble what is generally known and described as a super-altar in Roman Catholic churches or chapels.

The answer on behalf of the Hon. and Rev. Robert Liddell and the then Chapelwardens to this act on petition, denied that the monition was in any part uncomplied with, and pleaded: first, that the metal cross which was on the 27th of March 1857 standing in the church or chapel of Saint Barnabas (attached to the ledge of wood at the back of the stone

altar, which then stood in the chancel of the church or chapel) was at the present time placed on the sill of the centre compartment of the eastern window of the chancel of the church or chapel, five feet ten inches above the surface of the Communion Table standing there, and wholly disconnected therewith; secondly, that the table which had been substituted in the church or chapel for the stone altar which formerly stood therein was a flat moveable table of wood; and that the elevation or structure alleged in the second article of the act on petition as placed thereon was simply a moveable ledge of wood placed in order that two candlesticks might stand thereon at the back of the table, and that the ledge was always raised up before the celebration of the Lord's Supper, in order that the decree of the Court might be complied with, namely, that a fine linen cloth should cover the Communion table at the time of the ministration of the Lord's Supper, and that the cross was in the church or chapel at the time of the consecration thereof, and then formed one of the ornaments of the church or chapel.

Their Lordships were of opinion, "that no disobedience, no impropriety, no irregularity, has been established; and that the present application, therefore, failed."<sup>1</sup>

In the same spirit, usages not prescribed by the Prayer-Book during the service have been allowed—such as turning to the east while the creeds are read, the "Glory be to Thee, O Lord" before the reading of the Gospel and the expression of thanks after the reading of it, the use of hymns—a use perhaps not only not ordered, but contrary to the order of the Prayer-Book; and an inscription on a tombstone of "pray for the soul" of a departed person has been, by express judicial decision, pronounced not to be "contrary to the articles, canons, constitutions, doctrine, and discipline of the Church."—(*Breeks v. Woolfrey*, 1 Curteis Rep. 880.)

And here I will notice what I may call the churchwarden argument. It has been said that one test of the legality of ornaments is whether the churchwardens can or cannot be compelled to provide them. I am of opinion, however, that this is not a conclusive test. The law upon this subject was well and clearly laid down by Dr. Lushington,<sup>2</sup>—namely, that there are two classes of expenses for parochial purposes; one, necessary expenses, which the churchwardens may defray of their own authority out of a rate, without the sanction of the vestry; another, expenses not absolutely necessary, a class which requires, if they are to be defrayed out of a rate, the previous sanction of the vestry. Under this latter category would fall

<sup>1</sup> *Liddell v. Beal*, 14 Moo. P. C. 1.

<sup>2</sup> 1 Burn's *Eccl. L.*, p. 388 a.—ed. Phillimore: *Gathercole v. Wade*.



all expenses incurred for furniture of a decorative kind, which would also require the sanction of the Ordinary.

*The Special Charges considered.*

Having thus considered the principles of law which ought to guide me in adjudicating the charges preferred against the reverend defendants in the cases before me, I will now consider and pronounce judgment upon each individual charge, which, for the sake of convenience, I will arrange in the following manner:—

First, the Elevation of the Blessed Sacrament, including the Kneeling;

Secondly, the use of Incense during the administration of the Holy Communion;

Thirdly, the Mixing the Water with the Wine during the administration of the Holy Communion;

Fourthly, the special charges against Mr. Simpson;

Fifthly, the use of Lights during the administration of the Holy Communion.

*Elevation; as to Mr. Mackonochie.*

*3d Article.*—The third of the articles in this suit charges the defendant, “That he, the defendant, had in his said Church, and within two years last past, to wit, on Sunday the 23d of December, on Christmas Day last past, and on Sunday the 30th December, all in the year 1866, during the prayer of consecration, in the order of the administration of the Holy Communion, elevated the paten in a greater degree than by merely taking the same into his hands, as prescribed by the Book of Common Prayer, and in a greater degree than is necessary to conform with the requirements of such book, and permitted and sanctioned such elevation; and taken into his hands and elevated the cup during the prayer of consecration aforesaid in a manner contrary to the said statutes, and to the said Book of Common Prayer, and permitted and sanctioned the cup to be so taken and elevated; and knelt or prostrated himself before the consecrated elements during the prayer of consecration, and permitted and sanctioned such kneeling or prostrating by other clerks in holy orders.”

*Answer.*—To this article the defendant has answered, “That whilst he admits that he, the defendant, did on the said two Sundays, and on Christmas Day, during the prayer of consecration, kneel, and sanction kneeling by other clerks, before the

Lord's Table, he denies that his said party did on the said two Sundays, and on the said Christmas Day, kneel or prostrate himself before the consecrated elements, or permit and sanction such kneeling or prostration by other clerks in holy orders, as in the 3d article pleaded. And he further alleges that whilst he admits that he did on the said two Sundays and Christmas Day, in the said 3d article mentioned, elevate and sanction the elevation by other clerks of the paten and cup above his head, as in the said 3d article pleaded, yet that such elevation of the paten and cup has been wholly discontinued by the said defendant during the administration of the Holy Communion ever since the said 30th December 1866, and long prior to the institution of this suit; that such practice was discontinued in consequence of legal advice, and in compliance with the expressed wish of the Lord Bishop of the diocese of London, and with a resolution of convocation, as was well known to the promoter of this suit before he instituted the same."

*4th Article.*—The *fourth* Article alleges "that such elevation of the cup and paten, and such kneeling and prostrating, are severally unlawful additions to and variations from the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer and administration of the sacraments and other rites and ceremonies of the Church, and are contrary to the said statutes, and to the 14th, 36th, and 38th of the said constitutions and canons, and also to an Act of Parliament passed in a session of parliament holden in the thirteenth year of Queen Elizabeth, cap. 12, and to the 25th and 28th of the articles of religion therein referred to."

*Answer.*—The defendant to this article answers, "That he denies that the elevation of the paten and the taking and the elevation of the cup so discontinued as aforesaid, and the kneeling and prostrating charged in the said 3rd article, are severally unlawful additions to and variations from the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer and administration of the sacraments and other rites and ceremonies of the Church, or that they are contrary to the said statutes, and to the 14th, 36th, and 38th of the said constitutions and canons, and also to an Act of Parliament passed in a session of Parliament holden in the thirteenth year of Queen Elizabeth, cap. 12, and to the 25th and 28th articles of religion therein referred to, as in the 4th article alleged."

The elevation of the Blessed Sacrament was not incorporated formally into the law of the Western Church before the beginning of the thirteenth century. The account given by Cardinal Bona is clear and concise (*Rerum Liturgicarum*, lib. ii.

cap. 3, § 2): "Latini peracta consecratione, Græci paulo ante communionem, ut ex Liturgiis Jacobi, Basilii, et Chrysostomi manifestum est, corpus Dominicum et calicem elevant, ut a populo adoretur. Idque ab antiquo tempore fieri solitum indicant scriptores Græci." He then cites a variety of authorities in support of this position, and mentions the introduction of the custom of ringing a bell at the time of the elevation, at first as it should appear in order to excite the devotions of the faithful, and not for the purpose of the worship of the Host (p. 349).

It was not till the year 1217, during the Papacy of Honorius III., that this peculiar doctrine of elevation became part of the canon law.

In lib. iii. tit. xlii., Decret. Greg. cap. x., the decree upon the subject is as follows:

"Sane, cum olim (*ut infra*). Ne propter incuriam Sacerdotum divina indignatio gravius exardescat, districtè præcipiendo mandamus, quatenus a Sacerdotibus Eucharistia in loco singulari, mundo et signato semper honorifice collocata, devote ac fideliter conservetur. Sacerdos vero quilibet frequenter doceat plebem suam, ut, cum in celebratione missarum elevatur hostia salutaris, se reverenter inclinet, idem faciens, cum eam defert Presbyter ad infirmum. Quam in decenti habitu superposito mundo velamine ferat, et referat manifeste ac honorifice ante pectus cum omni reverentia et timore, semper lumine præcedente, cum sit candor lucis æternæ, ut ex hoc apud omnes fides et devotio augeatur. Prælati autem hujusmodi mandati graviter punire non differant transgressores: si et ipsi divinam et nostram volunt effugere ultionem."<sup>1</sup>

William, Bishop of Paris, soon after the beginning of the thirteenth century, made an order that, "Sicut alias statutum fuit, in celebratione missarum, quando corpus Christi elevatur, in ipsa elevatione vel paulo ante campana pulsetur, ut sic mentes fidelium ad orationem excitentur."

And Archbishop Peccham, who was consecrated in the year 1278, and died in the year 1292, appears to have first introduced into England this custom by the following constitution:<sup>2</sup>

"Altissimus," *et infra*. "In elevatione corporis Christi ab

<sup>1</sup> The title of the chapter is: "Eucharistia debet munde servari, et in ejus elevatione et delatione populus debet se inclinare: et cum defertur ad infirmum, debet deferri in decenti habitu, et cum lumine, transgressores vero graviter sunt puniendi."

<sup>2</sup> The title of this constitution is:—"In elevatione corporis Christi pulsentur campanæ, ut officio interesse nequeuntes, saltem genua flectant. Nec ministretur corpus Domini, nisi eis quos constat confessos esse, et parochianos ejus, in qua recipiant, ecclesia; nisi permissionem habeant, aut peregrini sint, aut necessitas urgeat."

una parte ad minus pulsantur campanæ, ut populares, qui celebrationi missarum non valent quotidie interesse, ubicunque fuerint, sive in agris sive in domibus, flectant genua, indulgentias concessas a pluribus episcopis habituri."

Lyndwood (writing, it is to be observed, about 1430) has this gloss: "*Elevatione*, quæ fit ut populus illud adoret."

This passage appears to me to dispose of the argument addressed to me by the leading counsel for Mr. Simpson, "that it had been the invariable practice of the Church of England not to connect adoration with elevation."

Nor am I satisfied by the difference between the canon of the Sarum use and that of the Roman Missal upon this point, that at the time of the Reformation the adoration was separated from the elevation of the Host. The true proposition is that the original practice, in England as in other countries, had been to stir up the devotion of the people to God by the elevation of the Blessed Sacrament, until in this, as in so many other instances, the Church, or perhaps more strictly speaking the Curia, of Rome introduced an unwarrantable innovation upon an ancient and laudable usage.

The first prohibition of this custom of elevating the Host in order that *it* might be adored, is to be found in the Order of the Communion of Edward VI., which was published in 1548, and preceded the first Book of Common Prayer. The last "note" to that order, after providing for the case in which it has become necessary to consecrate more wine than had been originally consecrated, contains these words, "and without any elevation or lifting up." This prohibition would seem, from the context, to be limited to the case of an additional consecration of wine. In the first Prayer-Book, after the prayer of consecration, follow these words: "These words before rehearsed are to be said, turning still to the altar, without any elevation, or showing the sacrament to the people."

The Council of Trent, by the 6th canon of the 13th session, passed the 11th of October 1561, decrees: "Si quis dixerit, in sancto eucharistiæ sacramento Christum unigenitum Dei Filium non esse cultu latriæ, etiam externo, adorandum, atque ideo nec festiva peculiari celebritate venerandum, neque in processionibus secundum laudabilem et universalem ecclesiæ sanctæ ritum et consuetudinem solenniter circumgestandum, vel non publice, ut adoretur, populo proponendum, et ejus adoratores esse idololâtras, anathema sit."

The liberal mind and strong sense of Luther appear in his treatment of this question of elevation. In the *Formula Missæ et Communionis* for the church at Wittenberg, he gives this direction: "(IV.) Finita benedictione chorus cantet sanctus et

sub benedictus *elevetur* panis et calix, ritu hactenus servato, vel propter infirmos qui hac repentina (mutatione) hujus insignioris in missa ritus forte offendentur, *præsertim ubi per conciones vernaculas docti fuerint quid ea petatur elevatione.*—(*Cod. Liturg.*, vol. ii. p. 87, ed. Leipsic, 1848.) Daniel, the learned German editor of the *Codex Liturgicus*, observes that the elevation was for a long time not only tolerated but approved of and defended by Luther. He thought it right that when the Sacrament was lifted up a bell should ring; for the priest and the bell spoke the same language, namely, "Hearken, ye Christians, and behold, then take and eat, take and drink, this is the body and blood of Christ." Afterwards Luther placed the elevation "inter adiaphora quæ possunt servari vel omitti ad habitum ecclesiarum," and discontinued it in the church at Wittemberg. The rite appears to have prevailed during the sixteenth and seventeenth centuries in the churches of Sweden and Denmark.

By the 28th of the Thirty-nine Articles which became part of the Statute Law in 1571, though passed in Convocation with the consent of the Crown in 1562, it is declared, "That the Sacrament of the Lord's Supper was not by Christ's ordinance reserved, carried about, lifted up, or worshipped."

It is true that these words contain a declaration only, and no specific order; but looking to the spirit as well as to the letter of our present Prayer-Book, as well as to this Article, and to the documents which illustrate the early period of the Reformation, it appears to me clear that those who guided the Church of England through this process of restoration to primitive antiquity were of opinion that the elevation was so connected with the repudiated doctrine of Transubstantiation, as distinguished from the Real Presence, that it ought not to be suffered to remain. And I am confirmed in this opinion by the authority of some of the greatest divines in our Church, of whom I will only cite two; one, the learned Grabe; the other, who received the thanks of Christendom for his defence of the Nicene Creed, Bishop Bull.

The former says, "But if it should be asked, of what use the said form, with such annotations, can be at present, when it is out of use, I answer, that it will serve, at least, to show to the honour of our forefathers, the first reformers of this Church, how near they, concerning the celebration of that most holy Sacrament, kept to the primitive institution of it by our blessed Saviour, and to the practice of His Holy Apostles and the first Apostolical Churches, although they changed and threw out many abuses and corruptions of this sacred ordinance which were crept in afterwards, and at last established by

Popish decrees and councils of later ages. Such was, in the whole, the use of an unknown tongue in this holy office.

“And not to mention the *elevation* of the consecrated elements to be worshipped by priest and all people as Jesus Christ Himself, both God and man in person, whom the Church of Rome believeth to be substantially and wholly present under the outward figures of bread and wine.”—(Grabe, M. S., *Adversaria*.)

Bishop Bull, in a portion of his answer to the Bishop of Meaux,<sup>1</sup> who had expressed his surprise that he was not a Romanist as well as a Catholic, says, “Come we now to the principal part of the Christian worship, the holy sacrament of the Eucharist. How lamentably hath the Church of Rome vitiated the primitive institution of that most sacred rite. She hath taken from the laity the blessed cup, contrary to our blessed Saviour’s express command as expounded by the practice of the apostles, and of the universal church of Christ for the first ten centuries, as hath been above observed.

“All the learned advocates of the Roman Church with all their sophistry, have not been able to defend her in this matter from manifest sacrilege, and a violation of the very essentials of the sacrament, as to the laity administered, nor can they prove it so administered to be a perfect sacrament. He that would see this in a short compass fully proved, and all the weak evasions of the Romanists obviated, may consult our learned Bishop Davenant. Besides, the whole administration of it is so clogged, so metaphorised and defaced by the addition of a multitude of ceremonies, and those some of them more becoming the stage than the table of our Lord, that if the blessed apostles were alive and present at the celebration of the mass in the Roman Church they would be amazed and wonder what the meaning of it was; sure I am they would never own it to be that same ordinance which they left to the churches.

“But the worst ceremony of all is the elevation of the Host to be adored by the people as very Christ himself under the appearance of bread, whole Christ, *Θεάνθρωπος*, ‘God and man,’ while they neglect the old *sursum corda*, the lifting up of their hearts to heaven where whole Christ indeed is.”

The kind of elevation which it is charged that at one time Mr. Mackonochie practised, and as to which witnesses were examined before me, amounts upon the evidence to the following acts, that after the consecration, both of the bread and of the wine, he elevated the paten and the cup respectively for an appreciable time, after which there was a pause before the service was continued; this evidence was taken at the beginning

<sup>1</sup> *Works*, ed. Oxford, 1827, vol. ii. p. 308.

of the cause ; but during the progress of the argument, at the desire and with the consent of both counsel, Mr. Mackonochie was examined by me upon the single point, whether when the elevation was made his face was or was not towards the people, Mr. Mackonochie said, "I do not turn round to the people, and I never have done so during any time of the consecration prayer."<sup>1</sup>

This elevation Mr. Mackonochie asserts, and it is not denied, that he discontinued after conference with his diocesan, and upon the other grounds to which I have already referred, before the institution of this suit.

I am very glad that he did so, because in my judgment that kind of elevation was unlawful, and I must and do admonish Mr. Mackonochie not to recur to it.

His present practice is not complained of, and some elevation the rubrics of the present communion service must contemplate when they order as follows: "Here the priest shall take the paten into his hands;" that is, into both his hands; subsequently to which he is ordered to break the bread. So also when he is directed to take the cup into his hand there must be some elevation from the Holy Table.

#### *Elevation ; as to Mr. Simpson.*

It is alleged in the 5th article filed against Mr. Simpson in the suit of *Flamank v. Simpson*, that he, Mr. Simpson, has, within two years last past, in the said parish of East Teignmouth, in the public celebration of the Holy Communion, after the Prayer of Consecration, raised the paten with both hands over his head, and the cup in like manner. And that such elevations of the paten and cup are unlawful additions to and alterations of the form and order prescribed and appointed by the said Book of Common Prayer and administration of the Sacrament, and other rites and ceremonies of the Church, and are contrary to the said statute law, constitutions, and canons.

Mr. Simpson, in the 4th answer filed by him, denies that he has, as in the said 5th article alleged, within two years last

<sup>1</sup> I have said "with the consent and desire of both counsel," because such was the fact; but if Mr. Mackonochie was by law an incompetent witness their consent in a criminal case would not render his evidence admissible; but I venture to think that he was a competent witness, and am emboldened to hold this opinion, though it be at variance with that of my predecessor, in consequence of the observation made by the Lords of the Privy Council in *Berney v. The Lord Bishop of Norwich*, a case in which judgment was delivered on the 28th February 1867.

Vide *infra*, *Bp. of Norwich v. Pearse*.

past, so raised the paten with both hands over his head, and the cup in like manner. But he says that he has, within the time aforesaid, in the reading the Prayer of Consecration so raised the paten on pronouncing the words "Do this in remembrance of me;" and he has so raised the cup on pronouncing the words "This is my blood of the New Testament which is shed for you and for many, for the remission of sins."

It clearly follows, from what I have said as to Mr. Mackonochie, that the elevation practised by Mr. Simpson is unlawful, and must be discontinued.

### *Kneeling.*

With respect to the charge against Mr. Mackonochie of kneeling or prostration before the Eucharist, I observed during the course of the argument that no charge of adoration of the Holy Sacrament itself, or of our Lord's body, being present after a corporal manner in the Holy Sacrament, was contained in these articles; that if it was intended to charge Mr. Mackonochie with either kind of adoration, the rules of pleading in criminal cases in this Court would have required that such adoration should have been distinctly and plainly averred.

The argument before me was confined to the allegation of improper or excessive kneeling; the evidence as to the fact was very far from being clear; Mr. Mackonochie was asked no question himself upon the subject.

Mr. Beames said, that after the elevation of the cup, Mr. Mackonochie prostrated himself on his knees with his head to the ground, and then that he knelt immediately after the cup was replaced, and that there was the same kneeling after the elevation of the paten. It was clear, however, from the evidence of this witness that Mr. Mackonochie remained on his knees, and that his head did not touch the ground, and that he did not really prostrate himself, supposing such a gesture of devotion to be, which I do not pronounce it to be, illegal.

The only other witness, the Reverend Henry Malim, deposed that the clergy, already kneeling, threw their bodies forwards, and that the consecrating clerk knelt in the middle of the prayer, and then went on with the prayer. But on further examination he said that he was behind him all the time, that he could not in fact say that he prostrated himself, but to use his own words "there was a somewhat excessive bending forwards." He said he was kneeling himself at the time, and that it was his own practice, when not assisting, to kneel during the prayer of consecration.

It is true that the Rubric does not give precise directions



that the celebrant himself should kneel at the times when it appears that Mr. Mackonochie does kneel; but I am very far from saying that it is not legally competent to him, as well as to the other priests and to the congregation, to adopt this attitude of devotion. It cannot be contended that at some time or other he must not kneel during the celebration, although no direction as to his kneeling at all are given by the Rubric.

It is observable that at the Savoy Conference the Puritans asked to have it considered "Whether it will not be fit to insert a rubrick touching kneeling at the communion, that is, to comply in all humility with the prayer which the minister makes when he delivers the elements."

No notice of this request was taken by the bishops unless it be considered to be included in their concession, "That the general confession at the communion be pronounced by one of the ministers, the people saying after him, all kneeling humbly upon their knees."—(*Cardwell's Conferences*, pp. 275, 363.)

Moreover, in my opinion, if Mr. Mackonochie has committed any error in this respect, it is one which should not form the subject of a criminal prosecution, but belongs to the category of those cases which should be referred to the Bishop, in order that he may exercise thereupon his discretion, according to the Rubric to which I have already referred.

### *Incense.*

The charge against Mr. Mackonochie as to the use of incense is twofold; the first part relates to what is technically called "censing persons and things," and is as follows:—

*7th Article.*—The 7th article alleges, "that the said defendant has in his said Church, and within two years last past, to wit, on Sunday the 23d December, on Christmas Day last past, and on Sunday the 30th December, all in the year 1866, used incense for censing persons and things in and during the celebration of the Holy Communion, and permitted and sanctioned such use of incense."

*Answer.*—And the defendant in answer to this article says, "that he admits that he (the defendant) on the Sunday the 23d December, on Christmas Day last past, and on Sunday the 30th December, used incense for censing persons and things in and during celebration of the Holy Communion, and permitted and sanctioned such use of incense;" but he alleges, "that ever since the 30th December 1866 he, the said defend-

ant, as was well known to the promoter of this suit prior to the institution thereof, desisted from so doing, and has ever since discontinued the said ceremony on being apprised by the opinion of counsel that such usage was of a doubtful legality, and that he has never since re-introduced the said ceremony, as appears in the published address of the said defendant, dated January 1867, and exhibited and appended to the articles brought in and admitted in the cause."

I should here observe, that an objection was taken on behalf of Mr. Mackonochie that this charge of censuring persons and things was not specified in the decree issued under the Letters of Request, and therefore, that according to the practice of this Court, it could not be preferred in the articles. My learned predecessor overruled this objection, and I thought it right, whatever my opinion might be, to abide by his decision.

It appears that Mr. Mackonochie has discontinued, though under protest, this particular use of incense, upon the same grounds and for the same reasons that he discontinued the elevation, and also before the institution of this suit.

The other part of the charge relates to another use of incense, and is laid in the following words:—

*8th Article.*—The 8th article alleges, "that the said defendant has in his said Church, and within two years last past, to wit, on Sunday the 13th day of January A.D. 1867, unlawfully used incense in and during the celebration of the Holy Communion, and permitted and sanctioned such unlawful use of incense."

*Answer.*—To this the defendant has answered, "that he admits that he has in his said Church, to wit, on Sunday the 13th day of January A.D. 1867, caused and allowed incense to be burned during the reading of the prayer of consecration, and afterwards until the time for the administration of the Communion to the people; and permitted and sanctioned such use of incense, but that he denies that he used the same unlawfully, or that such use is unlawful."

*9th Article.*—The 9th article charges, "that such uses of incense as in the two preceding paragraphs alleged are severally an unlawful addition to and variation from the form and order prescribed and appointed by the said Statutes, and by the said Book of Common Prayer and administration of the Sacraments and other rites and ceremonies of the Church, and are contrary to the said Statutes, and to the 14th, 36th, and 38th of the said constitutions and canons."

*Answer.*—The defendant in his plea has answered, "that he denies that such use of incense as in the 7th and 8th articles alleged are severally an unlawful addition to and variation

from the form and order prescribed and appointed by the said Statutes, and by the said Book of Common Prayer and administration of the Sacraments and other rites and ceremonies of the Church, and are contrary to the said Statutes, and to the 14th, 36th, and 38th of the said constitutions and canons, as in the 9th article alleged."

The objection is not taken to the general use of incense for the purposes of ornament or fumigation of the Church, for which purposes it appears to have been used at various times since the Reformation, and especially by the saintly Herbert, to whom Mr. Coleridge<sup>1</sup> referred:

"The country parson," Herbert says, "hath a special care of his church, that all things there be decent and befitting his name by which it is called. Therefore, first, he takes order that all things be in good repair, as walls plastered, windows glazed, floor paved, seats whole, firm, and uniform, especially that the pulpit and desk, and communion table and font, be, as they ought, for those great duties that are performed in them. Secondly, that the Church be swept and kept clean, without dust or cobwebs, and at great festivals strewed and stuck with boughs, and perfumed with incense. Thirdly, that there be fit and proper texts of Scripture everywhere painted, and that all the painting be grave and reverend, not with light colours or foolish antics. Fourthly, that all the books appointed by authority be there, and those not torn or fouled, but whole and clean, and well bound; and that there be a fitting and sightly communion cloth of fine linen, with a handsome and seemly carpet of good and costly stuff or cloth, and all kept sweet and clean in a strong and decent chest, with a chalice and cover, and a stoop or flagon, and a basin for alms and offerings; besides which, he hath a poor man's box conveniently seated to receive the charity of well-minded people, and to lay up treasure for the sick and needy. And all this he doth, not as out of necessity, or as putting a holiness in the things, but as desiring to keep the middle way between superstition and slovenliness, and as following the Apostle's two great and admirable rules in things of this nature; the first whereof is, 'Let all things be done decently and in order;' the second, 'Let all things be done to edification.'"—(*Works of George Herbert*, vol. ii. chap. xiii. p. 192. Title—"A Priest to the Temple.")

The burning of frankincense, probably on account of the grateful odour which it emits, and the graceful form which it assumes, may be traced, as an accompaniment of prayer, thanks-

<sup>1</sup> One of the counsel for Mr. Martin.

giving, and sacrifice, to the very earliest antiquity. All classical readers are aware of the *Βωμὸς θυήεις* of Homer,<sup>1</sup> and of the "centum aræ Sabæo thure calentes."<sup>2</sup> The use of incense in the Jewish worship was divinely ordained.<sup>3</sup> Nadab and Abihu were stricken with death because "they took either of them his censer and put fire therein, and put incense thereon, and offered strange fire before the Lord."<sup>4</sup> And Aaron, when he "made an atonement for himself and his house," was directed to "take a censer full of burning coals of fire from the altar of the Lord."<sup>5</sup> Solomon provided "censers of pure gold for the temple of the Lord."<sup>6</sup>

And it was truly urged that Zechariah was burning incense, according to the custom of the priest's office, in the Temple of the Lord,<sup>7</sup> when he received the message from the angel; and that in many places in Holy Writ prayer is symbolised by incense. It appears to have been very early in use, though the exact date of it is uncertain, among the Christians; it is mentioned in the apostolical canons, and there is no doubt that it is warranted by the authority of the primitive Church.

It certainly was in use in the Church of England in the time of King Edward the Sixth's first Prayer-Book. The visitation articles of Cranmer as to forbidding the censuring to certain images, etc., supplies one of the proofs of this fact. On the other hand the use of it during the celebration of the Eucharist is not directly ordered in any prayer-book, canon, injunction, formulary, or visitation article of the Church of England since the Reformation. Bishop Andrewes, a very high authority, appears to have used it, though in what way is not clear, in his own private chapel; and probably traces of the use of it may be found in the private chapels of other bishops, and in the Royal Chapels.

It is not, however, necessarily subsidiary to the celebration of the Holy Communion, and it is not to be found in the rubrics of the present Prayer-Book, which describe with considerable

<sup>1</sup> *Iliad*, viii. 48.

<sup>2</sup> *Virg. Æn.* i. 416.

<sup>3</sup> Incense.—*Dictionary of the Bible*. "Looking upon incense in connection with the other ceremonial observances of the Mosaic ritual, it would rather seem to be symbolical, not of prayer itself, but of that which makes prayer acceptable, the intercession of Christ. In Rev. viii. 3, 4, the incense is spoken of as something distinct from, though offered with, the prayers of all the saints (Luke i. 10), and in Rev. v. 8 it is the golden vials, and not the odours or incense, which are said to be the prayers of saints. Psalm cxli. 2 at first sight appears to militate against this conclusion; but if it be argued from this passage that incense is an emblem of prayer, it must also be allowed that evening sacrifice has the same symbolical meaning."

<sup>4</sup> Lev. x. 1.

<sup>5</sup> Lev. xvi. 12.

<sup>6</sup> 1 Kings vii. 50.

<sup>7</sup> St. Luke i.

minuteness every outward act which is to be done at that time.

To bring in incense at the beginning, or during the celebration, and remove it at the close of the celebration of the Eucharist appears to me a distinct ceremony, additional and not even indirectly incident to the ceremonies ordered by the Book of Common Prayer.<sup>1</sup>

Although therefore it be an ancient, innocent, and pleasing custom, I am constrained to pronounce that the use of it by Mr. Mackonochie in the manner specified in both charges is illegal, and must be discontinued.

### *Mixing Water with the Wine.*

*Article 10.*—The 10th article against Mr. Mackonochie alleges “that he, the defendant, has in his said church, and within two years last past, to wit, on Sunday the 23d day of December, on Christmas Day last past, on Sunday the 30th day of December, all in the year of our Lord 1866, and on Sunday the 13th day of January A.D. 1867, during the celebration of the Holy Communion, mixed water with the wine used in the administration of the Holy Communion, and permitted and sanctioned such mixing, and the administration to the communicants of the wine and water so mixed.”

*Answer.*—The defendant admits this article to be true.

*Article 11.*—The 11th article states “that such mixing and administration of the wine and water is an unlawful addition to and variation from the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer and administration of the sacraments, and other rites and ceremonies of the Church, and is contrary to the said statutes, and to the 14th, 20th, 21st, 36th, and 38th of the said constitutions and canons.”

*Answer.*—The defendant has denied in his plea, “that such mixing and administration of the wine and water, as in the said 10th article alleged, is an unlawful addition to and variation from the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer, and administration of the sacraments and other rites and ceremonies of the Church, and is contrary to the said statutes, and to the 14th, 20th, 21st, 36th, and 38th of the said constitutions and canons, as in the said 11th article alleged.”

There is a similar charge against Mr. Simpson.

It appears that from a very early period—the precise date is

<sup>1</sup> *Vide infra, Sumner v. Wix.*

uncertain—a custom prevailed amongst Christians of adding a very small quantity of water to the wine which forms one element of the Blessed Sacrament. This custom, whether it arose from a belief that the wine used by the Jews at the Pass-over, and by our Lord at the Last Supper, was mingled with water, or from some reason symbolical of His passion, is wholly unconnected with any Papal superstition, or any doctrine which the Church of England has rejected. It has the warrant of primitive antiquity and of the undivided Church in its favour.

The whole subject will be found discussed with his usual perspicuity and subtilty by Thomas Aquinas in the third part of his *Summa Theologica*, quæstio 74, “*De materia Eucharistiae quantum ad speciem* ;” which is divided into eight articles ; the sixth of which is, “*Utrum sit admiscenda aqua* ;” the seventh, “*Utrum aqua sit de necessitate hujus sacramenti* ;” the eighth, “*De quantitate aquæ quæ apponitur*.” With regard to the sixth, he decides “that some water shall be mingled with the wine ; with regard to the eighth, that it should be a very small quantity, ‘*paululum aquæ*,’ and for this reason, ‘*quia si tanta fieret appositio aquæ ut solverentur species vini, non posset perfici sacramentum*.” And in accordance with this view, with regard to the seventh, it is important to observe that he decides, that “*aquæ admixtio non est de necessitate sacramenti*.” The mingling of water, therefore, with the sacramental wine is clearly within that category of ceremonies as to the adoption of which each branch of the Church has its own liberty.

In our own Church this custom prevailed before the Reformation ; and in the first order of the communion, which preceded the first Prayer-Book, the rubric directed that the Priest should “*bless and consecrate the biggest chalice or some fair and convenient cup or cups full of wine with some water put unto it* ;” and the rubric to the Communion Service of the first Prayer-Book directs that the minister shall “take so much bread and wine as shall suffice for the persons appointed to receive the Holy Communion” . . . “and putting the *wine* into the chalice or else in some fair and convenient cup prepared for that use (if the chalice will not serve), putting thereto a little *pure and clean water*, and setting both the bread and *wine* upon the altar.” It is clear, therefore, that under the word “*wine*” might be comprehended the wine and water ; and in a subsequent rubric at the end of the service the direction is, that the pastors and curates shall find at their costs and charges “sufficient bread and wine for the Holy Communion.”

In all subsequent Prayer-Books the mention of water is omitted ; perhaps from the omission in the second Prayer-Book no argument unfavourable to the use of water could fairly

be drawn, as no manual acts of consecration are prescribed in that book. But in the present Prayer-Book the manual acts are advisedly specified with great distinctness and particularity; exact directions are given when the priest shall take into his hands the bread and the wine, when he shall place them on the table, and how he shall administer them; and I must bear in mind that the compilers of our present Prayer-Book had before them the first Prayer-Book of Edward VI., and carefully considered the rubrics which it contained; and in my opinion the legal consequence of this omission, both of the water and of the act of mixing it with the wine, must be considered as a prohibition of the ceremony or manual act of mixing the water with the wine during the celebration of the Eucharist.

I am by no means insensible to the very remarkable argument addressed to me by the Admiralty Advocate<sup>1</sup> with respect to the analogy between the blood and water used in the prototypal service of the Passover, and the wine and water in the Eucharist; and, as I have already observed, the mingling a little pure water with the wine is an innocent and primitive custom,<sup>2</sup> and one which has been sanctioned by eminent authorities in our Church, and I do not say that it is illegal to administer to the communicants wine in which a little water has been previously mixed;<sup>3</sup> my decision upon this point is, that the mixing may not take place during the service, because such mixing would be a ceremony designedly omitted in and therefore prohibited by the rubrics of the present Prayer-Book.

*Charge against Mr. Simpson of placing the Alms upon a Stool.*

The 6th article alleges that Mr. Simpson has, within two years last past, in his said parish church, on receiving the alms collected at the offertory, placed the said alms (and the basin containing them) on a stool instead of on the Holy or Communion Table, and that such placing of the alms on a stool, and not on the Communion Table itself, is an unlawful alteration in and deviation from the form and order prescribed and appointed by the said Book of Common Prayer, &c.

Mr. Simpson, in his answer, admits that he has so placed the

<sup>1</sup> One of the counsel for Mr. Simpson.

<sup>2</sup> The poet Spenser thus describes his *Fidelia* :—

“Shee was arrayed all in lilly white,  
And in her right hand bore a cup of gold,  
With wine and water fill’d up to the hight.”

*F. Q.*, Book i. Canto 10, St. 13.

<sup>3</sup> Vide *infra* *Elphinstone v. Purchas*.

said alms, and the basin containing them, on a stool used as a Credence Table instead of on the Holy Communion Table; but he denies that he has done so otherwise than to obtain more room upon the said Holy Communion Table. His counsel very properly stated that Mr. Simpson had done wrong, that he regretted having done so, and submitted himself to the judgment of the Court.

The 7th article filed against Mr. Simpson, namely, that he wilfully omitted the word "all" in saying the last prayer in the order of Morning and of Evening Prayer, has been abandoned, and I need not again advert to it.

### *Lighted Candles on the Holy Table.*

*Article 5.*—The 5th article against Mr. Mackonochie alleges "that the defendant has in his said Church, and within two years last past, to wit, on Sunday the 23d December, on Christmas Day last past, on Sunday the 30th December, all in the year of our Lord 1866, and on Sunday the 13th day of January in the year of our Lord 1867, used lighted candles on the Communion Table during the celebration of the Holy Communion, at times when such lighted candles were not wanted for the purpose of giving light, and permitted and sanctioned such use of lighted candles."

The answer to this article alleges, "that such charges are, in part, untruly pleaded, for the party proponent (the defendant) alleges that on the said three Sundays and Christmas Day, in the said 5th article mentioned, the said lighted candles were not placed on the Communion Table, but upon a narrow moveable ledge of wood, resting on the said table, and that the said candles were so placed and kept lighted, not during the celebration of the Holy Communion only, as falsely suggested in the said 5th article, but also during the whole of the reading of the Communion Service, including the Epistle and Gospel, and during the singing after the reading of the Nicene Creed, and during the delivery of the sermon."

*Article 6.*—The 6th article alleges "that the use of such lighted candles is an unlawful addition to, and variation from, the form and order prescribed and appointed by the said statutes, and by the said Book of Common Prayer, and administration of the sacraments, and other rites and ceremonies of the Church, and is contrary to the said statutes, and to the 14th, 36th, and 38th of the said constitutions and canons."

And the defendant in answer to this, "denies that the use of such lighted candles is an unlawful addition to, and variation from, the form and order prescribed and appointed by the said



statutes, and by the said Book of Common Prayer, and administration of the sacraments and other rites and ceremonies of the Church, and is contrary to the said statutes, and to the 14th, 36th, and 38th of the said constitutions and canons, as in the said 6th article alleged."

A similar charge has been made against Mr. Simpson.

There is no express direction in the Rubrics, or in the Statutes of Uniformity, or in the Canons of 1603 for the use of lights at all on the Holy Table. Nor is there, in these documents, any express prohibition of this ornament of divine service; and, adhering to the principle which has guided my judgment in the matters of the elevation, the mixing of water with wine, and of the incense, it becomes my duty to consider whether the use of lights on the Holy Table falls under the category of things indirectly, or by necessary implication, prohibited upon the grounds which have been stated, or whether it be lawful either as indirectly ordered or innocently subsidiary to divine worship. But there is also another consideration peculiar to this subject, and which must in some degree distinguish the treatment of this ornament from that which the others have received, namely, the important consideration whether the use of lights has not been ordered by competent authority, and whether that order must not, upon legal principles of construction, be deemed a part of the present law of the Church.

The Rubric directs, "that such ornaments of the church and the minister thereof shall be retained and be in use as were in this Church of England by the authority of Parliament in the second year of the reign of King Edward the Sixth." The Judicial Committee of the Privy Council have instructed me as to the legal meaning of the word "ornament" in this Rubric.<sup>1</sup>

<sup>1</sup> Their Lordships refer to Forcellini's lexicon for the meaning of Ornamentum; it is clearly explained in Lyndwood:

Lyndwood, p. 52. (Walterus.) "Sint (sc. Archidiaconi) Ecclesiarum Rectores;" et infra. "Provideant Archidiaconi ut linteamina et alia (m) ornamenta altaris, sicut decet, (n) sint honesta; ut libros habeat ecclesia idoneos ad psallendum pariter et legendum: et ad minus duplicia sacerdotalia vestimenta: et ut honor debitus divinis officiis in omnibus impendatur. Præcipimus etiam ut qui altari ministrat, suppellicio induatur."

(Gloss.) (m.) Ornamenta altaris. Qualia sunt frontilia, cortinæ, et cætera hujusmodi.

(n.) Sicut decet. Hæc decencia respici debet secundum qualitatem ecclesiæ et ipsius facultates; ut scilicet secundum quod ecclesia magis abundat in facultatibus, sic meliora et preciosiora habeat ornamenta.

Pp. 49, 50. (Title.) De Officio Archidiaconi. Archidiaconi est prospicere ut Sacramenta rite conserventur et administrentur, atque potissimum Eucharistia et sanctum oleum sub clavibus custodiantur. Ornamenta quoque Ecclesiarum ab eodem visitentur, et possessiones recenseantur."

Stephanus. "Habeant etiam Archidiaconi in scriptis redacta omnia ornamenta (t), et utensilia (u), Ecclesiarum. Vestes quoque et libros, quæ sin-

Their Lordships say as follows: "All the several articles used in the performance of services and rites of the Church are 'ornaments.' Vestments, books, cloths, chalices, and patens are amongst Church ornaments; a long list of them will be found extracted from Lyndwood in Dr. Phillimore's edition of Burn's *Ecclesiastical Law* (vol. i. pp. 375, 6, 7).<sup>1</sup> In modern times organs and bells are held to fall under this denomination." Their Lordships go on to say, and I invite particular attention to their language, "When reference is made to the first Prayer-Book of Edward the Sixth, with this explanation of the term 'ornaments' no difficulty will be found in discovering, amongst the articles of which the use is there enjoined, ornaments of the Church as well as ornaments of the ministers. Besides the vestments differing in the different services, the rubric provides for the use of an English Bible, the New Prayer-Book, a poor man's box, a chalice, a corporas, a paten, a bell, and some other things." "That these articles were included in the term 'ornaments of the Church' at the period in question is clear from two documents nearly contemporaneous, one before and the other after the establishment of the first Prayer-Book.

"In a letter of the council to Cranmer, dated the 30th April 1548, to be found in Strype's *Memorials of Cranmer*, vol. ii. p. 90, they complain of the conduct of certain churchwardens, who sent away their chalices, crosses of silver, bells, and other ornaments of the Church; and in a commission in 1552, 1 Card. Doc. Ann., p. 112, No. xxvii. (Ed. 1844), the commissioners are enjoined to leave 'in every church or chapel of common resort one, two, or more chalices or cups, according to the multitude of people in every such church or chapel, and also such other ornaments as by their discretion shall seem

gulis annis suo faciant conspectui præsentari, ut videant quæ fuerunt adjecta per diligentiam personarum; vel quæ tempore intermedio per ipsarum malitiam vel imperitiam deperierunt."

(Gloss.) (<sup>1</sup>) *Ornamenta.* Quæ sic dicta sunt, quia eorum cultu Ecclesiæ ornantur et decorantur. Sunt namque ornamenta secundum *Januen.* decus, gloria, laus, dignitas, sive preciosa vestimenta seu jocalia, quorum cultu Ecclesiæ decorantur.

(u.) *Utensilia*, i. e. ad utendum apta sive necessaria. Hæc autem alibi vocantur *Cimelia*, sicut legitur *extra de offi. Arch. c. ea quæ et 12 q. 2 Apostolicos.* Et per hæc *Utensilia* intelliguntur vasa Ecclesiæ quæcunque, sacrata vel non sacrata.

(*Constitutio Domini Othonis*), p. 52. "De Archidiaconis quoque statuimus ut ecclesias utiliter et fideliter visitent, de sacris vasis et (<sup>2</sup>) vestibus, et qualiter diurnis et nocturnis officiis ecclesiæ serviatur, et generaliter de temporalibus et spiritualibus inquirendo."

(Gloss.) (e.) *Vestibus.* Repete *sacris*, dictis vulgariter vestimentis. Supple, et cæteris ecclesiæ ornamentis.

<sup>1</sup> *Phillim. Eccles. Law*, p. 929.

requisite for the Divine Service in every such place for the time.'"—(*Westerton v. Liddell*, Moore, pp. 157, 158.)

Edward the Sixth succeeded to the throne on January 28, 1546-7. His Privy Council showed an early intention of carrying much further the Reformation begun in the preceding reign. For this object homilies were composed, mixed commissions of clergy and laity were formed, with circuits assigned to them and large visitatorial powers.

These royal visitations superseded and practically inhibited for a time diocesan visitations.

In 1547 the Royal Injunctions, the subject of so much discussion during the course of the argument, were issued. I refer to a very curious and rare edition with which I have been furnished, printed in London in 1547, contemporaneously therefore with the issue of the Injunctions themselves. The Injunctions begin as follows:—

"The Kynges mooste royal majestie, by the advice of his most dere uncle the Duke of Somerset, Lorde Protector of all his realmes, dominions, and subjectes, and governor of his most roiall persone, and the residence of hys moste honorable counsail, inteñdyng the advauncemēt of the true honor of Almighty God, the suppression of idolatrie, and supersticiō, throughout all hys realms of dominions, and to plant true religion, to the exterpaciō of all hipocrisy, enormities, and abuses, as to hys duety apperteineth; doth minister unto his loving subjectes, these godly injunctiōs, hereafter folowīg: Whereof, parte were genē unto them heretofore, by authoritie of his most derely beloved father, Kyng Henry the eighte, of most famous memorie and parte are nowe ministered and geven by hys Majesty; all which injunctions, his highness willeth and cōmandeth his saied louing subjectes, by his supreme auctoritie, obediently to receoue, and truely to observe and kepe, euery mā in their offices, degrees, and states, as they will avoyde his displeasure, and the paynes in the same injunccions hereafter expressed."

The reference to the Injunctions issued by Henry the Eighth is important, in its bearing upon an argument presently to be noticed.

I pass on to the Injunctions more immediately affecting the present subject. Their general object, it will be seen, is to remove all ornaments that relate to superstition or idolatry.

"Besides this, to the intent that all supersticion and hipocrisy, crept into diverse mennes hartes, may vanysh away, thei shal not set furthe or extolle any images, reliques, or miracles, for any supersticiō or lucre, nor allure the people be any inticementes, to the pylgrimage of any saint or ymage; but reprovyng y same, they shall teache, that al goodnesse, health,

and grace, ought to be both asked and looked for only of God, as of the varye author and geuer of the same, and of none other."

*Item.*—"That they, the persones above rehersed, shall make or cause to bee made in their churches, and every other cure thei have, one sermō, every quarter of the yere at the least, wherein they shall purely and syncerely, declare the woordes of God; and in the same, exhorte their hearers to the woorkes of faythe, mercye, and charitie, specially prescribed and commanded in scripture, and that woorkes devised by mannes phātasies, besides scripture, as wanderyng to pilgrimages, offeryng of money, cādelles or tapers, to reliques, or images, or kissing and lickying of the same, praying upon beades, or such lyke supersticiō, have not only no promise of reward in scripture, for doying of the: but cōtrariwise, great threatens and maledicciōs of God, for that they bee thynges, tendyng to idolatry and supersticiō, which, of al other offences, God Almighty doth most detest and abhorre for that the same diminishe moste his honor and glory."

The next Injunction is the one which affects the question as to the lawfulness of these lights.

*Item.*—"That suche images as thei knowe in any of their cures, to bee, or have been so abused with pilgrimage or offrynges, of any thyng made thereunto, or shal bee hereafter censured unto, thei (and none other private persones) shall for the advoyding of that moste detestable offence of idolotrie, furthewith take downe or cause to bee taken downe, and destroye the same, and shall suffre from hensefurthe, no torches, nor candelles, tapers, or images of ware, to bee sette afore any image or picture, but onely twoo lights upon the high aulter, before the Sacrament, whiche, for the significacion, that Christe is the very true light of the worlde, thei shall suffre to remain still: admonishyng their parishioners that images serve for no other purpose, but to bee a remembrance, whereby, man maie bee admonished of the holy lifes and conversacion of them that the said images doo represent; whiche images, if they doo abuse for any other intent, they commit idolotrie in the same, to greate daunger of their soules."

A variety of questions arise upon the subject of these Injunctions; but they may be all, I think, comprehended under the following heads:—

1. Were these Injunctions lawfully issued under statutable authority?
2. If so, were they subsequently abrogated by statutable authority?

It could not have been accurately said, and it has very pro-

perly not been contended by the counsel for the promoter that any judgment has been given upon this subject which is binding upon this Court.

In the Saint Barnabas case, the use of lighted candles during the Holy Communion Service, an opinion, which will presently be considered, adverse to their legality was expressed by the learned Judge of the Consistory of London, but during the progress of the suit it appeared that as a matter of fact the candles were not lighted as alleged, and no decree was made by the Court. The legality of lighted candles on the Holy Table therefore was not directly submitted to the judgment of the Court of Arches or of the Privy Council; but it will be seen that the latter tribunal expressed an opinion both in favour of the lawfulness of the Injunctions and of the Candlesticks upon the Holy Table.

First, let me consider whether these Injunctions were lawfully issued? The question is one of no mean difficulty. To define with certainty the exact legal limits within which the Crown might in the time of Edward VI. exercise its prerogative in relation to the Church, is a task which no one cognisant of the difficulties which surround the subject would willingly undertake.

It is said in the books that the Crown has power to *visit, reform, and correct* abuses in the Church by the ancient law<sup>1</sup> of the realm. What this power was, however, is very uncertain. When Henry the Eighth procured from Parliament the title of Supreme Head of the Church (though in fact, whatever servile courtiers might say, he did but regain the position from which the Pope had expelled the Crown), he no doubt asserted that this authority required no sanction of Parliament for its exercise, but it is remarkable that he obtained that sanction as well as that of Convocation for almost every important act which he did to the Church.

In truth our Thirty-seventh Article of the Civil Magistrates fixes the bounds of the Royal authority in matters of religion:—

“The Queen’s Majesty hath the chief power in this realm of England, and other her dominions, unto whom the chief government of all estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain, and is not, nor ought to be, subject to any foreign jurisdiction.

<sup>1</sup> 2 Roll. Abr. 230. Prerogative le Roy. (E.) *Quel person visitera.*

(1.) Per l’auncient Ley de Realm le Roy ad power de visit reform et correct toutes abuses et enormities en l’Eglise (Davies 1, Proxies, 4).

(2.) Per le statute temps H. 8. le corone fuit lorsque remit et restore a son auncient jurisdiction que fuit usurp per l’Evesque de Rome (Davis 1, Proxies 4).

"When we attribute to the Queen's Majesty the chief government, by which titles we understand the minds of some slanderous folks to be offended, we give not to our princes the ministering either of God's word or of the Sacraments, the which thing the Injunctions also lately set forth by Elizabeth our Queen do most plainly testify, but that only prerogative which we see to have been given always to all godly Princes in Holy Scripture by God Himself; that is, that they should rule all estates and degrees committed to their charge by God, whether they be ecclesiastical or temporal, and restrain with the civil sword the stubborn and evil doers. The Bishop of Rome hath no jurisdiction in this realm of England."<sup>1</sup>

When Cranmer was persecuted under the form of a trial at Oxford, Dr. Martin, who appeared as his judge, asked him (I take the account from the last volume of the Dean of Chichester's work), "Who was the supreme head of the Church of England?" The Archbishop was glad to have an opportunity of explaining his former rather strong assertions on this point. "Marry," he said, "Christ is head of this member, as He is of the whole of the body—of the universal Church." "Why," quoth Dr. Martin, "you made King Henry the Eighth supreme head of the Church." "Yea," said the Archbishop, "of all the *people* of England, as well ecclesiastical as temporal." "And not of the Church?" asked Martin. "No," said Cranmer, "*for Christ is only* head of this Church, and of the faith and religion of the same. The king is head and governor of his people, which are the visible Church." "What!" quoth Martin, "you never durst to tell the King so?" "Yes, that I durst," quoth he, "and did, in the publication of his style; *wherein he was named supreme head of the Church there was never other thing meant.*"—(*Hook, Lives of the Archbishops of Canterbury*, vol. ii. (N. S.) p. 373.)

It is, to say the least, extremely doubtful whether, at any period of our constitution, the Crown had power to issue, of its own authority, Injunctions of this kind.

<sup>1</sup> The Abbé Fleury quite understood this position (*Disc. sur l'Hist. Eccles.*, Dissert. ix.):—"Le titre de *Chef de l'Eglise* que les Anglicans ont donné à leur Roi, ne doit pas être pris à la rigueur. En lui donnant cette qualité, il ne prétendent point qu'il puisse exercer les fonctions ecclésiastiques, donner la mission aux Evêques et aux Prêtres, administrer les sacrements, en un mot, qu'il soit le principe de la puissance spirituelle. Il ne lui donne point d'autre autorité dans les matières de la religion, que celle de faire des lois pour maintenir le bon ordre de l'Eglise, de soutenir et appuyer celles qui sont faites par les Evêques, d'assembler des conciles, de contenir les ecclésiastiques comme des laïques dans la soumission due au Prince, à l'exclusion de toute puissance étrangère."

See too the first canon of 1603.

It becomes, therefore, important to consider the language of what is called the Supremacy Act.

The Statute of 26 Henry VIII. cap. 1, was passed A.D. 1534, and enacts as follows:

"Albeit the King's Majesty justly and rightfully is and ought to be the supreme head of the Church of England, and so is recognised by the clergy of this realm in the convocations, yet nevertheless for corroboration and confirmation thereof, *and for increase of virtue in Christ's religion within this realm of England, and to repress and extirp all errors, heresies, and other enormities and abuses heretofore used* in the same, be it enacted by authority of this present Parliament, that the King our Sovereign Lord, his heirs and successors, kings of this realm, shall be taken, accepted, and reputed the only supreme head on earth of the Church of England, called *Anglicana Ecclesia*, (2.) and shall have and enjoy, annexed and united to the imperial crown of this realm, as well the title and style thereof, as all honours, dignities, preheminences, jurisdictions, privileges, authorities, immunities, profits, and commodities to the said dignity of supreme head of the same Church belonging and appertaining; (3.) and that our said Sovereign Lord, his heirs and successors, kings of this realm, shall have full power and authority from time to time to *visit, repress, redress, reform, order, correct, restrain, and amend* all such errors, heresies, abuses, offences, contempts, and enormities, whatsoever they be, which by any manner, spiritual authority, or jurisdiction, ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity, and tranquillity of this realm, any usage, custom, foreign laws, foreign authority, prescription, or any other thing or things to the contrary hereof notwithstanding."

There is no doubt that under the authority of this Statute the three Royal Injunctions in the years 1536 and 1538 were issued. The Statute of 31 Henry VIII., cap. 8, intituled "An Act that Proclamations made by the King shall be obeyed," commonly called the Proclamation Act, was not passed till the year 1539.—(*Strype's Memorials*, 1 pt. i. 494-7.)

Strype remarks "that these last injunctions were given out by reason of the negligent observation of the former, which the clergy took little heed to."

There is no reason for surprise, therefore, in finding some of them repeated in the next reign (see p. 496 *in fine*), such especially as that which orders the ministers to preach against "offering candles and tapers to relicks."

It has been argued by Mr. Stephens,<sup>1</sup> adopting the opinion of Sir John Dodson, that this statute, as well as every statute "relating to doctrine or other matters of religion," has been repealed by 1 Edward vi. cap. 12, passed in the year 1547. The proposition appeared to me at the time, having regard to the necessary consequences flowing from it, to be of an alarming character; and, after very mature deliberation, I have arrived at the conclusion that it cannot be sustained. The section which it is alleged possesses this great power of abrogation and repeal (section 2), is as follows:—"And allso be it enacted by thauctoritie aforesaide, that all Actes of Plament and Estatutes towchinge mencynonge or in anny wise concernynge religion or opynyons, that is to saie aswell the Statute made in the first yere of the reigne of the King's noble progenitor Kinge Richarde the Second, and the Statute made in the second yere of the reigne of King Henry the Fyfthe, and the Statute allso made in the xxv<sup>th</sup> yere of the reigne of Kinge Henry theight concerninge punishment and reformaçon of Heretykes and Lolardes, and everie provision therein conteyned, and the Statute made for the abolishment of diversitie of opinions in certaine artycles concernynge Christian Religion cōmonlie called the Sixe Articles, made in the Plament begonne at Westmestre the xxviiij<sup>th</sup> daie of Apryll in the xxxj<sup>th</sup> yere of the reigne of the moste noble and victorious Prynce of moste famous memorie Kinge Henry theight, father to our saide moste drad Sovereigne Lorde the Kinge that now is, and allso the Acte of Plament and Statute made at the Plament begoonne at Westmestre the xvj daye of Januarye in the xxxiiij<sup>th</sup> yere of the reigne of the saide late King Henry theight, and after that proroged unto the xxij<sup>th</sup> daye of Januarye in the xxxiiij yere of the reigne of the saide late King Henry theight, touchinge, mentioninge, or in anny wise concerninge bookes of the Old and New Testament in Englishe, and the pryntinge, utteringe, selling, giving, or delivering of bookes or writings, and reteyninge of Englishe bookes or writings, and reading, preaching, teaching, or expounding of Scripture, or in auny wise touching, mentionynge, or concerninge anny of the same matters: And allso one other Statute made in the Plament holden at Westmestre in the xxxv<sup>th</sup> yere of the reigne of the saide late King Henry theight, concerninge the qualificaçon of the Statute of Sixe Articles, and all and everie other Acte or Acts of Plament concerninge doctrine and matters of religion, and all and everie braunche, artycle, sentence, and matter, paynes, and forfeitures conteyned, mentioned, or in anny wise declared in anny of the same Acts of

<sup>1</sup> One of the counsel for Mr. Martin.



Plament or Estatutes, shall from hensfurthe be repealed and utterlie voyde, and of none effecte."

It was truly observed by Mr. Hannen<sup>1</sup> that the object of this statute is to repeal laws which inflicted severe punishments and penalties, imprisonment, fine, and death, on account of opinions entertained "concerning doctrine or matters of religion," such as had been enforced in the reigns of Richard II., Henry V., and Henry VIII., against heretics of various kinds.

If the wider signification which has been contended for be given to this statute, it would in truth repeal the principal statutes enacted during the reign of Henry VIII. for establishing the independence of the Church of England.

It will be difficult to maintain that the statute against the payment of annates (23 Henry VIII. c. 20), the restraint of appeals (24 Henry VIII. c. 12), and even the Act of Supremacy (25 Henry VIII. c. 19), would not fall under the category of enactments concerning "doctrine or matters of religion;" but in truth the number of statutes which this construction would repeal might amount to forty-two, and certainly would include a great many of grave importance.<sup>2</sup> I remember that Sir W. Maule (one of the members of the Judicial Committee) observed, "that if there were anything in Magna Charta about religion, it would on this construction be repealed."

I am of opinion that the operation of this statute of Edward VI. must be confined within the limits which I have stated, and that it has not repealed any power to issue Royal Injunctions which Henry VIII. derived either from the Supremacy or the Proclamation Statute.

The legal authority of these Injunctions of Edward VI. was discussed in the case of *Westerton v. Liddell*. The judge of the Consistory of London held that the burden of proving their legal authority lay upon those who asserted it, and that the burden had not been discharged, and he treated the Injunctions as invalid; and on that ground, among others, decided that the "Cross" was not a lawful ornament of the Church.

The Court of Arches, however, held that Edward VI. had power to issue these Injunctions under the authority of the Proclamation Act, 31 Henry VIII. cap. 8, and the learned judge decided that the Cross was an illegal ornament because it was forbidden under the name of an "Image" by these very Injunctions of Edward VI.

When the case of *Westerton v. Liddell* was appealed to the Judicial Committee of the Privy Council, they decided that the

<sup>1</sup> One of the counsel for Mr. Simpson.

<sup>2</sup> Perry on Lawful Church Ornaments, App. pp. xi.-xxxv.

Cross was a lawful ornament, and that it was not an "Image" forbidden by these Injunctions.—(*Moore*, 161 *in fin.*)

In arriving at this conclusion, they certainly treated the Injunctions as valid, whether or not they agreed with Sir John Dodson's opinion that their validity was derived from the powers conferred on the Crown by the Proclamation Act; and referring to the 28th section of these very Injunctions, they say, "The section could not mean that all candlesticks should be removed from Churches, for two were to be retained" (namely, by the third section) "on the High Altar."—(*Moore*, 165, 166.)

If this be so, their decision is binding upon me, and the general question as to the legal validity of these Injunctions has been decided in the affirmative. It may be as well, however, to look a little more closely into this question.

It has been argued that these Injunctions were not lawfully issued under that Act, because it related only to temporal and not to spiritual matters, and also because the orders which it prescribed for the preparation and issue of instruments under its authority were indispensable conditions, and had not been complied with.

Mr. Stephens, in his argument upon this subject, laid down four propositions. First, if these Injunctions were issued under the Proclamation Acts, nevertheless, upon the repeal of those Acts in November 1547, they were not in force by the authority of Parliament in the second year of Edward VI. Secondly, if they were intended to be issued under the Proclamation Acts of Henry VIII., they were not issued in accordance with their provisions, (1.) because there is no time limited during which the Injunctions were to continue in force; (2.) because the copies of those Injunctions which were printed and circulated were not signed by thirteen members of the King's Council, as required by 31 Henry VIII. cap. 8, and there is no evidence of their having been proclaimed in accordance with the third section of that Statute. Thirdly, that instead of the punishment by fine and imprisonment which the Council, under section 4 of 31 Henry VIII. cap. 8, were empowered to inflict, the Injunctions of 1547 only threatened ecclesiastical punishments, which the Council had no power to inflict under the Proclamation Act; and those ecclesiastical punishments are to be inflicted by the ordinary and not by the thirteen members of the King's Council. Fourthly, it appears from the earliest historians of the Reformation, Fox, Fuller, and Heylin, that the Injunctions were not issued under the Proclamation Act, but by virtue of the King's supremacy.

From the first of these propositions I have already expressed

my dissent. With regard to the second, I think there is every presumption of law, and that a court of justice must, after this distance of time, act upon that presumption, that these Injunctions were signed by the requisite number of members required by this statute, and the absence of a specified time during which the Injunctions were to be in force would not, in my opinion, invalidate their validity. As to the objection that they were not duly proclaimed in the market-place by the Sheriff, the clause which requires this seems to me directory only, and to whatever penalty non-compliance with it might render the Sheriff amenable, such non-compliance would not invalidate the Injunctions. The contrary position was, indeed, maintained by Bishop Gardiner<sup>1</sup> when he was imprisoned for disobedience to these Injunctions, which he considered to have been issued under the Proclamation Act. It is remarkable, however, that he does not dispute the power of the Crown to issue the Injunctions, nor that the proper number of counsellors had not signed the instrument, but maintains that he ought not to be imprisoned by virtue of the Proclamation Act; and it might be that the Injunctions were valid under the "Supremacy Act," but that the additional power of secular punishment given by the Proclamation Act could not be put in force against him, and that he was only liable to ecclesiastical punishment under the Injunctions. This was probably the opinion of Fox, Fuller, and Heylin, to whom Mr. Stephens referred in his fourth proposition.

I have made these observations upon the Proclamation Act out of deference to the argument which was addressed to me; but after all, whether these observations are well founded or not is of small moment, because it seems to me impossible to doubt that these Injunctions were recognised by the Legislature, not only because they would derive validity from the Supremacy Act, but also because they are specially recognised in the first Prayer-Book, which is part of the first Statute of Uniformity, in the following words: "Upon Wednesdays and Fridays the English Litany shall be said or sung in all places after such form as is appointed by the King's Majesty's Injunctions, or as is or shall be otherwise appointed by His Highness."—(*Liturgical Services*, p. 97: *Rubric after the Communion Service*.)

I should mention that in the year 1548-49 the Visitation Articles for the diocese of Canterbury in the second year of Edward VI. repeat this Injunction in the following inquiry: "Whether they have not . . . destroyed in their churches, chapels, and houses all images, all shrines, coverings of shrines,

<sup>1</sup> *Collier's Eccl. Hist.*, vol. v. p. 199.

all tables, candlesticks, trindles or rolls of wax, pictures, paintings, and all other monuments of feigned miracles, pilgrimages, idolatry, and superstition, so that there remain no memory of the same in walls, glass windows, or elsewhere ;” and also the inquiry : “ Whether they suffer any torches, candles, tapers, or any other lights to be in your churches, but only two lights upon the high altar.”—(*Cardwell, Doc. Ann.* vol. i. pp. 50-51.)

Before I leave this subject let me observe that I cannot find that the legal authority of these Injunctions *per se* was ever seriously questioned before the judgment of Dr. Lushington in *Westerton v. Liddell*. Nor am I aware of any statute,—none has been cited to me,—by which they have been deprived of their original authority. There were many occasions on which those who were adverse to them would gladly have impugned their original validity, and there was no lack of learned advisers versed in legal and constitutional lore to have prompted or maintained such a proposition.

In the interval between 1547 and 1549 no objections whatever appear to have been taken to these injunctions ; but in that year a paper appears, the authority of which is extremely questionable ; it was unsigned, and the author is unknown : it is headed “ Articles to be followed and observed according to the King’s Majesty’s Injunctions and Proceedings ;” and the second of these articles forbade, among a variety of other things, “ setting any light upon the Lord’s board at any time.”—(*Card. Doc. Ann.* vol. i. 75.)

It is clear, however, that these Articles (perhaps Visitation Articles, and only binding, like those of Ridley in 1550, if at all, in a particular diocese) cannot affect the question of whether lights were an ornament “ in use in this Church of England by authority of Parliament in the second year of the reign of King Edward the Sixth.”

Here I must notice two remarkable letters which throw the light of contemporary history on this subject ; the first is a letter written by Martin Bucer and Paul Fagius to the ministers at Strasburg (*Original Letters* published by the Parker Society, p. 535) ; it is dated April 26, 1549. “ We yesterday waited upon the Archbishop of Canterbury, that most benevolent and kind father of the Churches, who receives and entertains us as brethren, not as dependants. The cause of religion as far as appertains to the establishment of doctrines and the definition of rites is pretty near what could be wished.”

“ As soon as the description of the ceremonies now in use shall have been translated into Latin we will send it to you. We hear that some concessions have been made both to a respect for antiquity and to the infirmity of the present age,

such, for instance, as the vestments commonly used in the Sacrament of the Eucharist and the *use of candles*, so also in regard to the commemoration of the dead and the use of chrism, for we know not to what extent or in what sort it prevails. They affirm there is no superstition in these things, and that they are only to be retained for a time, lest the people, not having yet learned Christ, should be deterred by too extensive innovations from embracing His religion, and that rather they may be won over."

The second letter is from John Hooper to Henry Bullinger, 7th December 1549 (*Original Letters*, Parker Society, page 71); it is, "The altars are here in many churches changed into tables. The public celebration of the Lord's Supper is very far from the order and institution of our Lord. Although it is administered in both kinds, yet in some places it is celebrated three times a day. Where they used heretofore to celebrate in the morning the Mass of the Apostles, they have now the Communion of the Apostles; where they had the Mass of the Blessed Virgin, they have now the Communion, which they call the Communion of the Virgin; where they had the principal or High Mass, they now have, as they call it, the High Communion. They *still retain their vestments and the candles before the altars.*"

Surely during the reign of Elizabeth the legal invalidity of these Injunctions would have been urged by those who were adverse to the use of lights.

Bishop Cox, writing to Gualter on February 12, 1571, says of the Queen, that she "has always been so exceedingly scrupulous in deviating even in the slightest degree from the laws prescribed."—(*Zurich Letters*, 1st series, No. xciv., p. 234.) And it is an admitted fact that the two lights were used in her chapel at the celebration of the Holy Communion. It is no less certain that many of her counsellors, temporal and spiritual, pressed her to discontinue the use of these lights, an object they were most anxious to effect, but in no one single instance did they ever allege to Her Majesty that the burning of these lights upon the Holy Table was contrary to the law. I say this with some confidence, not only because I have been unable to find any instance myself, but because the leading counsel for the promoter, whose industry and whose acquaintance with these subjects no one will gainsay, having been so good, in compliance with my request, as to make search into the authorities upon this point, was unable to find that any such argument had ever been adduced.

The lawfulness of placing these two lights upon the Holy Table appears to me established by these Injunctions, unless

they are, as has been contended, by necessary implication abolished, inasmuch as they are significant of a Papal superstition, which was rejected by the Church at the time of the Reformation.

To this argument there are various answers :

First. These lights, in their original institution, were not significant of any rejected Papal superstition, but of the fundamental truth of Christianity, namely, the light of the Gospel. The origin of them in the canon law I will presently refer to.

Secondly. They were suffered to remain because of their strictly evangelical character; they were for the honour of Christ, not of the Blessed Virgin or of Saints, as lights on bye altars might be.

About the year 376 (A.D.) Vigilantius spoke with derision of the practice of Christians to burn candles during Divine Service at mid-day. Saint Jerome wrote a defence of the Church, and of this practice :

“ Non diffiteor (he says) omnes nos, qui in Christo credimus, de idololatriæ errore venisse, nō enim nascimur, sed renascimur Christiani, et quia quondam colebamus idola, nunc Deum colere nō debemus, ne simili eum videamur cum idolis honore venerari? Illud fiebat idolis, et iccirco detestandum est; hoc fit martyribus, et iccirco recipiendum est nam et absq. martyrum reliquiis per totas orientis ecclesias, quando legendum est evangelium, accenduntur luminaria, jam sole rutilante, non vtiq. ad fugandas tenebras, sed ad signum lætitiæ demonstraundum, unde et virgines illæ evangelicæ semper habent accensas lampades suas; et ad apostolos dicitur: *Sint lumina vestri præcincti, ut lucernæ ardentes in manibus vestris.* Et de Joanne Baptista: *Ille erat lucerna ardens, ut lucens:* ut sub typo luminis corporalis illa lux ostendatur, de qua in psalterio legimus: *Lucerna pedibus meis verbum tuum Domine, ut lumen semitis meis.*” —(*Hieronym. Stridonensis “Opera.” Adversus Vigilantium,* t. 1, p. 160, ed. Colon. 1516.)

Dr. Donne, in his defence of the use of lights in the daytime during Divine service relies much upon the early Christian practice :

“ I would not (he says) be understood to condemn all use of candles by day in Divine service, nor all churches that have or do use them, for so I might condemn even the primitive church in her pure and innocent state. And therefore that which Lactantius, almost three hundred years after Christ, says of those lights, and that which Tertullian, almost a hundred years before Lactantius, says in reprehension thereof, must necessarily be understood of the abuse and imitation of the Gentiles therein;

for that the thing itself was in use before either of the times I think admits little question. About Lactantius' time fell the Eliberitan Council, and then the use and the abuse was evident; for in the 34th canon of that council it is forbidden to set up candles in the churchyard; and the reason that is added declares the abuse . . . that the souls of the saints departed should not be troubled. Now the setting up of lights could not trouble them, but these lights were accompanied with superstitious invocations, with magical incantations, and with howlings and ejaculations which they had learned from the Gentiles, and with these the souls of the dead were in those times thought to be affected and disquieted. It is in this ceremony of lights as it is in other ceremonies; they may be good in their institution, and grow ill in their practice. So did many things which the Christian church received from the Gentiles in a harmless innocence degenerate after into as pestilent superstition there as amongst the Gentiles themselves. For ceremonies which were received but for the instruction and edification of the weaker sort of people were made real parts of the service of God and meritorious sacrifices. To those ceremonies, which were received as helps to excite and awaken devotion, was attributed an operation and an effectual power, even to the ceremony itself, and they were not practised, as they should, *significativè*, but *effectivè*, not as things which should signify to the people higher mysteries, but as things as powerful and effectual in themselves as the greatest mysteries of all, the Sacraments themselves. So lights were received in the primitive church to signify to the people that God the Father of Lights was otherwise present in that place than in any other; and then men came to offer lights by way of sacrifice to God; and so that which was providently intended for man, who indeed needed such helps, was turned upon God, as though He were to be supplied by us. But what then? Because things good in their institution may be depraved in their practice . . . shall therefore the people be denied all ceremonies for the assistance of their weakness? . . . We must not therefore be hasty in condemning particular ceremonies, for in so doing, in this ceremony of lights, we may condemn the primitive church that did use them, and we condemn a great and noble part of the reformed church which doth use them at this day."—(*Dr. Donne's Sermons*, p. 80, fol., 1640, vol. i. p. 156, 8vo.)<sup>1</sup>

<sup>1</sup> Luther allowed the use of these lights, see his *Deutsche Messe*, 2 Codex Liturgicus, p. 97.

*Des Sonntags fur die leyen. ib.* p. 108.

Da lassen wyr die Messegewand, altar, liechter noch bleyben, his sie alle

Thirdly, as to the averment that the words "before the Sacrament" denote the *reserved Sacrament*.

The practice of reserving the Holy Sacrament, it has been truly said, is unlawful according to the present law of the Church of England.

In the Office for the Communion of the Sick in the Prayer-Book of Edward VI. it is provided by the prefatory rubric as follows: "And if the same day there be a celebration of the Holy Communion in the Church, then shall the priest reserve (at the open Communion) so much of the Sacrament of the body and blood as shall serve the sick person, and so many as shall communicate with him (if there be any); and so soon as he conveniently may, after the open Communion ended in the Church, shall go and minister the same, first, to those that are appointed to communicate with the sick (if there be any), and last of all to the sick person himself."—(*Liturgical Services*, ed. Cardwell, 1844, p. 141.)

In the present Prayer-Book it is ordered: "And if any of the bread and wine remain unconsecrated, the curate shall have it to his own use; but if any remain of that which was consecrated, it shall not be carried out of the Church, but the priest, and such other of the communicants as he shall then call unto him, shall, immediately after the Blessing, reverently eat and drink the same."

The light which burnt before the reserved Sacrament was generally a lamp.

werden, oeder uns gesellet zu endern, wer aber hie anders vil faren, lassen wyr geschehen.

Editor's note.—Gerberus, l. c. p. 459. "Die lichter oder wacks-keitzen, die wir bey der handlung des heiligen nachtmals anzünden, sind auch unter die ceremonien zu rechnen." P. 132.—*Auch sollen die gewonlichen liechter, zu den hovis, messen, und andern empton, auch sonst des winters zur nothinfz gebrand werden, was aber darüber sonst sonderliche liechter des sonderschaften und gülden, oder entzeler personen verhanden, sollen abgethan, und was etwan darauff gewand sol nach befelch der visitation zu besserm brauch gefurt werden.*

*Wie man die krancken communiciren sol.*

Editor's note, p. 432.—"In deme also de Pfarrhere solekes, also hyr vör hır steit, mit dem volcke, unde mit dem krancken rēdet, let ne dorch den cōstes, de alle wēge mit gan schal, bereiden einen disch, mit brodt unde wyn, mit einem reinen doke bedeket, unde bereidet das up dat brodt in der patene, den wyn in dem ketke, etc." P. 3. 563.—*Multi alii libri mentionem faciunt candelarum in celebratione sacramenti accendendarum.* Gb. p. 487. Es sind aber die ceremonien bey communion derer patienten nicht allenthalben einerley. An manchen orten werden noch 2 lichter angezündet und auf den tisch gesetzt, auch ein crucifix dazu, andere aber lassen diese dinge weg, und achten sie nicht, wie si denn auch nicht nōthig seyn.



This light was continually burning, and therefore probably oil was used, whereas these two lights were only burning during the celebration.

The lights before the reserved Sacrament appear to have been always of an uneven number when the light was not, as it usually was, single.

The lights "before the Sacrament" in England were necessarily, for mystical reasons, or more properly fancies, enumerated by Lyndwood, but which it is not necessary to recapitulate here, made of wax.

The words "before the Sacrament" are omitted in Cranmer's Visitation Articles intended to execute the Injunction, but that clearly means "tempore quo missarum solennia peraguntur," while the ceremony was being performed. The candles might be lighted before the elements have been consecrated, and before the Sacrament is therefore complete, "accedit verbum elemento et fit sacramentum," as Saint Augustine says, but they are not the less burning before it when it is complete.

The reserved Sacrament was not in the time when Lyndwood wrote his Commentary (in 1430) placed upon the "High Altar." It was one of the usages peculiar to the Church of England to suspend the reserved Sacrament above the altar.

The account given by Lyndwood clearly shows that *two wax* candles (the number and the quality it is important to notice) ought properly to accompany every celebration of the Mass, because Christ is the splendour of eternal light.

In a constitution of Archbishop Walter under the following title, "Sacerdos curet, ut omnia Eucharistiæ deservientia sint integra et munda, atque verba consecrationis debite pronunciet nec celebret antequam matutinas primam et tertiam perlegerit, nec sine clerico superpellicio induto, nec sine tunica, nec in peccato mortali," we find this order :

Lyndwood, p. 236, *Walterus*.—"Nullus insuper sacerdos parochialis præsumat missam celebrare, antequam matutinale persolverit officium, et primam et tertiam de die. Item nullus clericus permittatur ministrare in officio altaris, nisi indutus sit superpellicio, et tempore quo missarum solennia peraguntur, accendantur (n) duæ candelæ, vel ad minus una."

Upon this constitution the gloss of Lyndwood is as follows :

(n) *Duæ candelæ*.—"Est enim a parte juris ordinatum, quod sacerdos sine lumine ignis non celebret missam. (*Extra eo c. ult. ubi de hoc.*) Si tamen faciat, nihilominus conficit, licet graviter peccet, secundum *Hostien.* ibi, et concordant alii *doctores.* Et nota, quod candelas in celebratione missæ arsuras convenit esse de cera potius quam de alia materia. *Candela*

*namque sic ardens significat ipsum Christum, qui est splendor lucis æternæ.*" (*Extra eo c. sane.*)<sup>1</sup>

The Devonshire rebels, when in 1549 they demanded the restoration of Roman Catholic rites, drew up a series of articles in which their grievances were stated, they said in their 4th article :—

"We will have the Sacrament hang over the high altar, and there to be worshipped, as it was wont to be ; and they which will not thereto consent, we will have them die like heretics against the Holy Catholic Faith."

The answer of Cranmer is very remarkable :

"Is this the Holy Catholic Faith, that the Sacrament should be hanged over the altar and worshipped ? and be they heretics that will not consent thereto. . . . Innocent III., about 1215 years after Christ, did ordain that the Sacrament and Chrism should be kept under lock and key. But yet no motion he made of hanging the Sacrament over the high altar, nor of the worshipping of it. After him came Honorius III., and he added further, commanding that the Sacrament should be devoutly kept in a clean place, and sealed, and that the priest should often teach the people reverently to bow down to the Host when it is lifted up in the mass time, and when the priest should carry it to the sick folks. And although this Honorius added the worshipping of the Sacrament, yet he made no mention of the hanging thereof over the high altar as your article propoeth. Nor, how long after, or by what means, that came first up into this realm, I think no man can tell. And in Italy it is not yet used until this day."—(*Strype's Cranmer*, App. 97.)

The inference to be drawn from this letter is that the two lights ordered by the Injunctions of 1547, and which Cranmer had enforced by his Visitation Article in 1548, could not have been placed before the reserved Sacrament, inasmuch as the complaint of the rebels in 1549 is that the Sacrament was not suspended over or placed upon the High Altar. It is remarkable that Dr. Rock, whose knowledge as an antiquarian in the matter of Church rites and ceremonies is supposed to be considerable (*The Church of our Fathers*, vol. iii. part ii. p. 208),

<sup>1</sup> Unde et candelæ in sui compositione significat Christum propter tria : componitur namque candelæ ex cera, lychno, et lumine. Sic quoque Christus constat ex carne virginea sine semine generatus, sicut procedit cera ex ape sine generatione vel coitu apis. Lychnus, qui est candidus, significat in Christo animam candore innocentie adornatam. Lumen vero significat ejus divinitatem carni unitam. De his sic dicitur *Cantic.* 5 : "*Dilectus meus candidus propter animam candidam et rubicundus propter divinitatem fulgidam Electus ex milibus propter carnem sine peccato genitam.*"

says, "That the first wooden or stone tabernacle resting on the Altar seen in this land was put up in Queen Mary's reign."

It appears from Lyndwood's gloss upon the Provincial Constitution of John of Peccham that according to the English custom the reserved Eucharist was placed in a *Pyx*, and the *Pyx* in a *Tabernaculum*, and the *Tabernaculum*, instead of being placed stationary as it afterwards was in conformity with later Roman usage upon the Altar, was hung up over it. And in support of Dr. Rock's assertion that in Queen Mary's reign the reserved Sacrament was placed upon the Altar is the inquiry of Cardinal Pole in 1557, "Whether they do burn *a* lamp or *a* candle before the Sacrament;" and referring to his Injunctions in 1556 this would appear to have been "a tabernacle set in the midst of the High Altar."

With respect to the custom of the Greek Church, Goar says:—

"A lamp, kept perpetually burning, is suspended in such a manner as to hang between the Altar and the place for the Blessed Sacrament, and is regarded by the Greeks as a becoming token of reverence towards the word of God inscribed within the sacred volume, and the Word made flesh, Christ Jesus dwelling with us, but veiled under the appearance of the sacramental species."—(*Goar, Euchal. Græc.*, p. 15; *Hierurgia*, p. 507.)

I was referred by Mr. Prideaux<sup>1</sup> to a treatise in French upon the exposition of the Holy Sacrament of the Altar. It was published in 1673, and the account which the author, a Roman Catholic of course, gives of the practice as to the reserved Sacrament, the importance especially of having a lamp perpetually burning before it, is interesting, and bears upon the subject now under consideration. "Néanmoins" (says the author), "on ne se met pas en peine comment la très-Sainte Euchariste est logée dans les Eglises de la campagne, n'y comment elle est portée aux malades, dans presque tous les villages, où elle y est portée dans un si pauvre appareil, qu'il est plutôt capable d'exciter de la douleur et de l'indignation dans le cœur des véritables fidèles, que de la dévotion et du respect. La plus part de ces Eglises sont ou désolées, ou découvertes, ou sans lambris, ou sans vitres, ou sans luminaires, ou sans livres, ou enfin destituées sans ornements nécessaires pour célébrer dignement les saints mystères, et les divins offices. Leurs vaisseaux sacrez ne sont que d'estain, ou de cuivre, ou mesme de plomb en quelques endroits; leurs tabernacles, sont ou rompus, ou difformés, ou mal-ornez; ou enfin leurs fabriques n'ont point de revenu pour entretenir une lampe toujours ardente devant la

<sup>1</sup> One of the counsel for Mr. Mackonochie.

*Sanctuaire où repose l'Eucharistie.* Et l'on fait tous les jours de grandes dépenses dans les villes pour l'exposition fréquente de ce divin mystère." The author regrets this expense, and continues: "Ne vaudroit-il pas mieux les employer à la décoration, ou aux réparations des églises de la campagne, et à l'achat des vaisseaux sacrez, des livres, des meubles et des ornements dont elles ont si grand besoin? N'a-ce pas esté l'intention de Paul III. qu'elles y fussent employées, comme on le peut voir par les paroles de sa bulle que nous avons rapportées?"—(*Traité de l'exposition du St. Sacrement de l'Autel*, ed. 1673, p. 171.)

It is surely most improbable that Cranmer, who was advancing tentatively in the path of reform, and who was the real author of the Injunctions, should have ordered two lights to be continued perpetually burning before the Reserved Sacrament, having regard to his desire to abrogate the custom of reservation, and also on account of the expense which the ordering would have entailed upon the parishioners.

Gavanto (vol. v. p. 65), writing in Italy his *Praxis Compendiaria Visitationis Episcopalis*, and describing the duties of the bishop on his visitation, under the heading "De Sanctissima Eucharistia," says:—

"Observet Episcopus, et Notarius describat, an sint, qualia sint, quæ sequuntur;" and among these articles is to be found "Basim Tabernaculi vacuam" and "Lampadem ardentem," which is clearly the one lamp before the Reserved Sacrament.

Symbolism and the worship of symbols are distinct things, "is confirmat usum qui tollit abusum."

I am disposed to assent to the opinion expressed by Mr. Stephens in his elaborate and useful edition of the Book of Common Prayer:—

"It may, however," that learned person says, "be argued that a distinction is to be taken between (1) the lights burning before shrines and images, (2) the symbolical lights formerly placed on the altar during the communion, and (3) those which are for actual use for the decent enlightenment of the house of God. The lights mentioned in King Edward's Injunctions are not to be confounded with the lamp or cresset, a single light, burning before the suspended Pyx. King Edward's mention of the Sacrament appears to be merely circumstantial: *two* lights (which are known to be of wax, not *one* lamp) were to be on the altar before the Sacrament or Pyx, 'for the signification that Christ is the very true light of the world.' The Pyx was then considered to contain the actual body of Christ. The removal of the Pyx, in consequence of the purified doctrine of the Church, did not weaken the force or propriety of the symbol, as Christ is spiritually present in His own house. It is to be

remarked that Archbishop Cranmer omits the words, 'before the Sacrament.'—(*Book of Common Prayer*, vol. ii. p. 1120.)<sup>1</sup>

The usages with respect to the custody of the Reserved Sacrament appear then to have been these:—

- (1.) The use which Lyndwood refers to as existing in Holland, Portugal, and other places, and which apparently existed too in Italy, of keeping it in a place in the wall under lock and key.
- (2.) The peculiar English custom of suspending it in a Pyx in a Tabernaculum over the High Altar.
- (3.) Cardinal Pole's order in Queen Mary's time, that it should be placed upon the Altar.

In *Westerton v. Liddell*, Dr. Lushington came, apparently not without reluctance, to the conclusion that candlesticks upon the Holy Table were lawful ornaments.

It seems to me difficult to suppose that the use of candlesticks does not bear witness to the partial retention,—no uncommon fact in the history of ritual observances,—of the custom of burning lights upon the altar, embodied in the earliest usages of the Church, in the provincial constitutions of our own country, and in the Injunction of 1547.<sup>2</sup>

I should not omit to notice the argument, much referred to by counsel, from the inventories made by order of the Government of Edward the Sixth, in order to stop the wholesale sacrilege and plunder of the furniture and goods of parish churches by those who humbly imitated the rapine which, on a large scale, had been carried on by the courtiers, out of their zeal for the Reformed Religion.

I am not inclined to rely very much, on the one hand, upon the fact that certain ornaments are proved by these inventories to be *de facto* in existence after the second year of Edward the Sixth, nor, on the other hand, that only certain of these ornaments were retained, by the commissioners who caused these inventories, for the use of parish churches.

However, the fact is not to be laid wholly out of consideration that two or three years after the date of the first Prayer-Book there should be in twenty-one counties no less than 1400 churches which possessed each two candlesticks. Such is the result, I believe, of an investigation of the inventories in the Record Office, which were taken in 1552, when the second Prayer-Book was in course of preparation.

<sup>1</sup> Dr. Hook seems to be of the same opinion on this point. (See his *Church Dictionary*, article "Lights.")

<sup>2</sup> It is true that candlesticks possess, as Archdeacon Freeman observes (*Rites and Ritual*, p. 76), a symbolism of their own, and that St. John saw in his vision "golden candlesticks," not burning candles or lamps (St. John v. 35; Rev. v. 8; viii. 3).

Inasmuch, therefore, as I think that the Injunctions which order these two lights were issued under statutable authority, and have not been directly repealed by the like authority; inasmuch as they are not emblematical of any rite or ceremony rejected by our Church at the time of the Reformation; inasmuch as they are primitive and catholic in their origin, evangelical in their proper symbolism, purged from all superstition and novelty by the very terms of the Injunctions which ordered their retention in the Church, I am of opinion that it is lawful to place two lighted candles on the Holy Table during the time of the Holy Communion, "for the signification that Christ is the very true light of the world."

### *Conclusion.*

These are the conclusions at which I have arrived, and this is the Judgment which I am about, in formal language, to pronounce, after a most anxious, painful, and, I may be allowed to add, conscientious, however inadequate, examination of the law applicable to the facts of the case. I have not been able to conceal from myself that this exposition of the law may wound the feelings of some, whose love for the Church of Christ is as unquestionable as their loyalty to the Church of England,—men who think no ornament too costly, no service too magnificent, for the house of God,—capable of any act of self-denial and self-sacrifice to promote these objects,—to whom it may at first appear harsh and illiberal to be told that the sentence of the law bids them forego any symbolical act, or incident of Divine worship, with which they have accustomed themselves to associate in any way the administration of the Blessed Sacrament of the Body and Blood of our Lord; but I have good hope that further and deeper consideration will convince them of the truth of the proposition, which I stated at the outset of my Judgment, that no matter of doctrine or faith is affected by this decision, the true result of which is simply to pronounce, that by those statutes, ordinances, and canons, which form the compact of union between the Church and the State in this country, it has been determined that certain usages, however in themselves innocent, laudable, and primitive, shall, for the sake of general peace and harmony, form no part of the rites and ceremonies of the Church of England.

In *Westerton v. Liddell* the Privy Council said, "Their Lordships are not disposed in any case to restrict within narrower limits than the law has imposed, the discretion which within those limits is justly allowed to congregations by the rules both of the Ecclesiastical and the Common Law Courts."

The basis of the religious establishment in this realm was, I am satisfied, intended by the constitution and the law to be broad, and not narrow. Within its walls there is room, if they would cease from litigation, for both parties; for that which is represented by the promoter and for that which is represented by the defendant; for those whose devotion is so supported by simple faith and fervent piety that they derive no aid from external ceremony or ornament, and who think that these things degrade and obscure religion; and for those who think with Burke, that religion "should be performed, as all public solemn acts are performed, in buildings, in music, in decorations, in speech, in the dignity of persons according to the customs of mankind taught by their nature, that is, with modest splendour and unassuming state, with mild majesty and sober pomp;" who sympathise with Milton the poet rather than with Milton the Puritan; and who say that these accessories of religious rites,—

". . . . dissolve them into ecstasies,  
And bring all Heaven before their eyes."

Saint Chrysostom and Saint Augustine represented different schools of religious thought; the Primitive Church held them both. Bishop Taylor and Archbishop Leighton differed as to ceremonial observances, but they prayed for the good estate of the same Catholic Church; they held the same faith "in the unity of spirit, in the bond of peace, and in righteousness of life;" and the English Church contained them both.

There is surely room for both the promoter and the defendant in this Church of England, and I should indeed regret if, with any justice, it could be said that this judgment had the slightest tendency either to injure the Catholic foundations upon which our Church rests, or to abridge the liberty which the law has so wisely accorded to her ministers and her congregations.

I must say a word as to costs. This is a matter to be governed by the discretion of the Court, that is, by a discretion judicially exercised.

In the case of *Martin v. Mackonochie*, it appears that the promoter is not a churchwarden, nor a resident parishioner. Of the five charges brought against Mr. Mackonochie, in which I include the excessive kneeling, upon three there have been adverse decisions to Mr. Mackonochie. With respect to the *elevation*, Mr. Mackonochie submitted the question to his Ordinary, and discontinued, under his direction, the practice before the institution of this suit, though, it is true, he has done so under protest.

With respect to the *incense*, he had discontinued, though also

under protest, the censuring of persons and things, before the institution of this suit.

With respect to the *excessive kneeling*, I have decided that it was a matter that ought to have been referred to the discretion of the Ordinary.

With respect to the *mixing water with the wine*, the decision is in favour of the promoter; and with respect to *the lights*, in favour of the defendant.

Taking all the circumstances into my consideration, I shall make no order as to costs in this case.

In the other case of *Flamank v. Simpson*, the circumstances are materially different. Mr. Flamank is a churchwarden, and Mr. Simpson does not appear to have submitted to the control of his Ordinary any of the practices for which he has been articulated in this Court. Upon the question of "lights" the decision is in his favour, and another of the charges was abandoned at the hearing. No expense has been incurred by the examination of any witnesses, and I think I shall, upon the whole, do justice by condemning Mr. Simpson in a sum of £80 *nomine expensarum*.

I admonish Mr. Mackonochie to abstain for the future from the use of incense, and from the mixing water with the wine, as pleaded in these Articles. And I further admonish him not to recur to the practices which he has abandoned under protest, with respect to the elevation of the Blessed Sacrament, and the censuring of persons and things.

I admonish Mr. Simpson to abstain for the future from the elevation of the Blessed Sacrament, from mixing water with the wine, and from placing the alms upon a stool, as pleaded in these Articles.



THE OFFICE OF THE JUDGE PROMOTED BY  
THE BISHOP OF WINCHESTER v. RUGG.

*Where there are two churches in one benefice, it is the duty of the Incumbent to perform one service in each on every Sunday.*

THIS judgment was delivered by me on the 2d of May 1868. The defendant, who conducted his own case, appealed to the Privy Council, who affirmed my judgment. The case is reported in the Law Reports, in the Arches Court, 2 Admiralty and Ecclesiastical, page 247, in the Privy Council—2 Privy Council Appeals, page 223.

JUDGMENT.—This is a cause instituted in this Court by reason of letters of request from the Bishop of Winchester, under the provisions of the Clergy Discipline Act, 3 and 4 Victoria, chapter 86. The Bishop of Winchester is the promoter of the office of Judge. The defendant is the Reverend Lewis Rugg, a beneficed clerk in the diocese of Winchester. The object of the suit is to compel Mr. Rugg, who is the incumbent of Ecchinswell-with-Sydmonton, to perform one service every Sunday in the chapel of the latter benefice. Mr. Rugg appeared by a proctor under protest to the jurisdiction of this Court, and on the 26th of July brought in an Act on petition in which the grounds of his protest were set forth at length. An answer was filed on the part of the promoter, and a reply was put in on the 20th August. The vacation then intervened. On the 19th of December the last affidavit was filed. On the 5th of February the Court overruled the protest, assigned Mr. Rugg to appear absolutely, and reserved the question of costs until the final hearing of the cause. On the 6th of February the Articles containing the charge against Mr. Rugg were filed. A negative issue was given on his behalf. On the 24th of

February he filed a responsive plea. On the 19th of March the proceedings were closed. The hearing of the cause was fixed for a day before Easter, but was postponed at the request of Mr. Rugg, who, though appearing by a proctor, conducted his case in person. The Court, having regard to the nature of the case and the rights of the parishioners of Sydmonton, fixed peremptorily the 18th of April for the hearing of the cause. Mr. Rugg did not appear in person, but his proctor read a letter from him desiring an indefinite postponement of the cause on the ground of Mr. Rugg's illness, that gentleman having desired to conduct his case in person. The Court directed Mr. Rugg's proctor to remain in Court, and to take such notes as he might think expedient for his client's interest, and proceeded to hear the argument of the counsel for the promoter. The case was then adjourned till Monday, the 27th of April, on which day Mr. Rugg appeared in Court and argued at considerable length his own cause. The counsel for the promoter made a short reply, and the Court has now to pronounce judgment on the case.

The second article charges, "That Lewis Rugg was and is a clerk in holy orders of the United Church of England and Ireland, and was on or about the 29th day of September 1852 lawfully licensed to be the Perpetual Curate and Incumbent of the perpetual curacy and benefice of Ecchinswell-with-Sydmonton, in the county of Southampton, diocese of Winchester, and province of Canterbury, and has continued to be such perpetual curate and incumbent up to the present date."

The third article charges, "That the said perpetual curacy and benefice consists of two ancient parochial chapelries now and for many years past known by the respective names of Ecchinswell and Sydmonton, in each of which has been from time out of mind a consecrated church or chapel, to wit, the church or chapel of St. Lawrence, Ecchinswell, and the church or chapel of St. Mary, Sydmonton. That such ancient parochial chapelries up to the 18th day of August 1852, belonged for all ecclesiastical purposes to the vicarage and parish church of Kingsclere, but were separated therefrom by an Order in Council bearing date the 18th day of August 1852, and since that date have been and are a separate parish for ecclesiastical purposes, and a perpetual curacy and benefice by the name or style of the Perpetual Curacy of Ecchinswell-with-Sydmonton."

The fifth article charges, "That the said Lewis Rugg has within two years last past offended against the said common law ecclesiastical and the said statute by having omitted to perform or to provide for the performance of public Divine

worship, as prescribed in the Book of Common Prayer and administration of the sacraments and other rites and ceremonies, according to the use of the Church of England, in the said church or chapel of St. Mary, Sydmonton, on Sunday, the 12th day of May; on Sunday, the 19th day of May; on Sunday, the 26th day of May; and on Sunday, the 2d day of June, all in the present year of our Lord 1867."

Then the answer says this in the third paragraph:—"That the said Lewis Rugg, in answer to the third paragraph of the aforesaid Articles brought into this Court, alleges and propounds that the building called the Church of St. Mary, Sydmonton, had been in existence as a church at the date of the Order in Council, mentioned in the said Articles, separating the districts of Ecchinswell and Sydmonton from the parish church of Kingsclere, and forming them into a separate parish for ecclesiastical purposes and benefice, by the name and style of the Perpetual Curacy of Ecchinswell-with-Sydmonton; and he the said Lewis Rugg further propounds that the said building, called the Church of St. Mary, Sydmonton, has not been from time out of mind a consecrated church or chapel, as alleged in the said Articles; and he the party proponent alleges that there was formerly an unconsecrated building, or oratory, or field chapel, standing in the private garden of the late Mr. William Kingsmill, of Sydmonton, and that in the month of February 1849, the said William Kingsmill, without any faculty, caused the said unconsecrated building to be pulled down, as though it were his own private property, although it was appendant to and belonged to the parish church of Kingsclere; at which time the whole material thereof was removed, and all the furniture belonging thereto was carried away. That to this old building, whether it were a chapel of ease or oratory, there was no endowment of tithes or glebe, or property of any kind. That for the services performed in it, which were never regular, only occasional, there was in ancient times some recompense by means of oblations or voluntary offerings, which have long ceased to be paid. That the said chapel or oratory never had in it the rights of burial or of marriage, nor of sacraments, until a small benefaction of twenty-five shillings was left, in 1726, to be paid yearly to the minister of Kingsclere for preaching a sermon and administering the sacrament of the Lord's Supper on Trinity Sunday, to include the finding, on his part, of the sacramental elements of bread and wine. That there was not belonging to the said chapel any ground outside the walls of it, but it was entirely surrounded by the private ground of the owner of Sydmonton House. That at the date of the Order in Council, in August 1852, the said field chapel had ceased to

have any existence, it having three years before been entirely removed. That the said Order in Council, recognising the existence of a chapel and chapel yard at Sydmonton, was issued upon mistaken information at the time, as there was neither chapel nor chapel yard, nor building of any kind, which the law of the land or any ecclesiastical jurisdiction could take notice of or recognise as either a parish church or chapel. That at the time of the said Lewis Rugg's admission to the incumbency of Ecchinswell-cum-Sydmonton, viz. on September 29, 1852, he alleges that there was but one presentative church upon the benefice, viz. that of the parish church of St. Lawrence, Ecchinswell. That during the whole period of his immediate predecessor's incumbency, and for nearly a twelve-month after his own admission, from February 1849 to May 1853, there had not been any public divine service performed except in the aforesaid parish church of St. Lawrence, Ecchinswell-cum-Sydmonton. That the late Mr. William Kingsmill, in or about the year 1853, rebuilt the aforesaid field chapel or oratory, without a faculty, partly on the site of the old one, without consulting, or reference to, the incumbent, the party proponent. That the tower, porch, and vestry were additions, and a small transept on the north side of the ancient edifice was never rebuilt. That the ancient footway and entrance by the western door under the belfry or bell turret has been stopped up and impeded by the erection of the tower, and a new road, by a more distant and circuitous way and entrance on the south side, has been made in lieu thereof, without any legal sanction or any authority whatever. That the old road and entrance by which alone access was obtained to the chapel is now claimed by the present owner of Sydmonton House as his private garden road; and the said Lewis Rugg alleges that he has at present no admission by the former way but by the favour of the proprietor of the ground adjoining."

It is not necessary to consider the question whether or no, previously to August 1865, the old church, which occupied the site of the present church, built in 1853, had been consecrated or not. The Order in Council, which dates from the 18th of August 1852, severs the chapelries of Ecchinswell and Sydmonton from the vicarage and parish church of Kingsclere, and forms them "into a separate parish for ecclesiastical purposes, and a perpetual curacy and benefice, by the name or style of the Perpetual Curacy of Ecchinswell-with-Sydmonton." The same order recites: "that there is in each of the said chapelries a church or chapel, that of Ecchinswell being nearly two miles, and that of Sydmonton being about three miles distant from the parish church of Kingsclere." It further recites: "that

each of the chapelries has its own churchwardens: that the tithe rent-charge of Ecchinswell was commuted at £60, and that of Sydmonton at £50, 8s. 6d., and that the fees of both chapelries were £2." These recitals in the Order in Council furnish evidence which the Court is bound to accept so far as they affect the question now before it. Mr. Rugg was in September 1852 instituted as incumbent of Ecchinswell-with-Sydmonton. Mr. Kingsmill, the principal owner of land in the parish, rebuilt the chapel at Sydmonton in 1853. It appears from the pamphlet printed by Mr. Rugg, which has been admitted as evidence in this cause, that for twelve years divine service was performed by him at Sydmonton. That in 1863 he had an unfortunate quarrel with Mr. Kingsmill about sittings in the chapel, and Mr. Rugg says: "I was thereupon put to the necessity of suspending divine service until my wishes were respected." On the 5th of September 1863 he wrote to Mr. Kingsmill, complaining of his conduct "in intimidating, as you have done, the inmates of my house from sitting in the pew which was appropriated to my household at the vestry meeting held prior to the opening of my church. I think indeed," he adds, "it is high time the church should be closed, when it has come to such a pass as this, coupled with the conduct which has generally been characterised with so much injustice towards your pastor. You cannot, I am sure, spiritually benefit by the services therein performed, nor, as far as your influence is permitted to operate, can it be otherwise than detrimental to the bearing of religion on the hearts of other worshippers." The Court much regrets to discover from this letter that a priest of the Church of England should suppose that he was justified, on account of a dispute about a pew or sitting in church with a particular person, to refuse the administration of spiritual services to a parish, and actually to close his church. It is clear that such an act was illegal as well as wrong. The quarrel seems to have been made up for a short time, for on the 7th of September Mr. Rugg wrote to Mr. Kingsmill: "I hope to resume the duty at Sydmonton next Sunday, and sincerely regretting as I do that any disturbance should have arisen from so trivial a matter, I remain," etc. On the 17th of December the Bishop wrote to Mr. Rugg enclosing a letter from one of the churchwardens of Sydmonton, complaining of Mr. Rugg, that on various Sundays there was no service at Sydmonton; that Mr. Rugg said he was not well or strong enough sometimes to perform service; and the writer adds: "he says he is not compelled to take the service of Sydmonton, because the church was not consecrated when rebuilt." That is in 1853. On the 21st of December Mr. Rugg wrote a long answer to the

Bishop, in which he maintained that as the church was not consecrated, he was not legally bound to perform service in it, and observes that "the portion of the endowment as regards Sydmonton does not amount, after the outgoings, to more than £20 a year." A further correspondence ensued between Mr. Rugg and the Bishop, in which the former maintained that he was not bound to officiate in an unconsecrated church. Early in August 1865, Mr. Rugg received notice that the Bishop intended to consecrate the chapel. Mr. Rugg declared that he would not consent to the consecration, and refused the use of his key for the purpose of opening the door of the church. The Bishop, however, proceeded to perform his duty, and consecrated the church on the 17th of August 1865. Mr. Rugg maintains that this consecration had no legal effect, and admits he has performed no Divine Service at Sydmonton on the days laid in the Articles, and, as I understand him, for a whole year, dating from the present month. There is no difficulty in deciding that this part of Mr. Rugg's defence is untenable and bad. I have no doubt at all that the church was duly and legally consecrated; that Mr. Rugg, by withholding his consent, in no way affected the legal validity of the act. It is not necessary that I should again advert to the Order in Council; but I listened with surprise to Mr. Rugg's assertion that Sydmonton was unendowed, whereas it is plain that he derives nearly as much income from it as from Ecchinswell. However, the question of the validity of this consecration has been determined by the Privy Council, whose decision is binding upon me. It happened that the Consistory of Winchester granted a faculty to Mr. Kingsmill for a vault under the chancel of this chapel. Mr. Rugg opposed this grant, and appealed to the Privy Council from the sentence of the Court of Arches confirming this grant.—(*Rugg v. Kingsmill*, Law Reports, 1 Adm. and Eccl. 343.) The Privy Council decided not only in express terms, but by their act, so to speak, that this church was consecrated, for they granted the faculty under conditions to Mr. Kingsmill.—(See *Law Reports*, 2 P. C. 59.) Those conditions related to a further consecration of ground adjoining the chapel. It is needless, however, to say to any person acquainted with ecclesiastical law, that a faculty cannot be granted for a vault in an unconsecrated building.

As to the objection raised by Mr. Rugg, that there is no right of way to this chapel, and that therefore he is excused from performing service therein—to pass over the fact that this objection is not sustained by any evidence, but is clearly an after-thought to support Mr. Rugg's resolution, taken upon other grounds, not to perform service in this chapel—the law

seems to me clear that if there is no access to this chapel except through the land of Mr. Kingsmill, that there must be what is called "a way of necessity" over the land of Mr. Kingsmill to this chapel, which is a public building, to which all the parishioners of Sydmonton have a right to resort.

The only question as to which there really can be anything like a serious argument in this case arises out of the second branch of Mr. Rugg's defence, which is briefly stated, that in the case of an incumbent having a parish consisting of two benefices with a chapel or church in each, it is competent to the incumbent to perform service in one of these chapels or churches alone; and that, by so doing, he satisfies the requisitions of the Act of Uniformity and of the general ecclesiastical law; that a discretion as to this matter is vested in the incumbent, and not in the Bishop; that the parishioners of Sydmonton, whatever may be said in the Order of Council, have no right or title to have Divine Service performed at all in this chapel. The consequence, I may observe, of this position would be, that they would be altogether deprived of their strict right to attend Divine Service, for if the accommodation of Ecchinswell be only sufficient for the parishioners of that chapelry, the parishioners of Sydmonton have certainly no legal right to sittings in the church of Ecchinswell. Another consequence would be, that if Mr. Rugg chose to shut up the chapel of Ecchinswell, wherein the majority of the parishioners reside, and perform service in Sydmonton alone, it would be competent to him to do so. It is not denied that by the existing law Mr. Rugg is compellable to perform morning and evening service in his parish, according to the Act of Uniformity, 13 and 14 Charles II. chapter 4, section 2. According to the provisions in the 1st and 2d of Victoria, chapter 106, section 80, the Bishop may order two full services, including a sermon or lecture, to be performed on every Sunday throughout the year, in the church or chapel of every or any benefice within his diocese. But in this case the exercise of his discretion is restrained by the conditions relative to the value of the living, and the number of the population. But no such restriction is imposed upon the authority of the Bishop to compel the performance of two services in each chapel of a parish. The 17 Charles II. chapter 3, section 1, par. 4, was cited by Mr. Rugg. But in the first place, the statute applies only to a very particular class of churches, namely, those in cities and towns corporate; and in the second place, the principle of the Act is directly opposed to Mr. Rugg's argument, for the discretion as to the performance of Divine Service is expressly vested in the Bishop, and not in the minister. There are in this kingdom many parishes which contain united

benefices, with a church in each, and it is, I believe, for the very first time that it has been contended by the incumbent of such a parish that it is competent to him to perform Divine Service in one of those chapels only, and that the inhabitants of the district in which the other church is situated may be deprived of the right, equally recognised by the common and by the ecclesiastical law of this realm, to the performance of Divine Service by their minister in their own church. To whom are these parishioners to look for redress for this wrong done to them? How are they to obtain the performance of Divine Service in their church? Surely, by an appeal to the authority of their Bishop. He has the *cura curarum animarum* within his diocese. It is his bounden duty to enforce in every church within his diocese the performance of the services prescribed in the Book of Common Prayer; and where the circumstances of the parish are unfortunately such as not to furnish the means of performing full Divine Service in both churches of a united parish, it is, in my opinion, clearly the intendment of the law, ancient and modern, common and ecclesiastical, as well as of the particular Order in Council under which these parishes were united, that a service should be performed every Sunday in each church, so that the inhabitants of both parishes should have access, upon this Holy Day at least, to their respective churches, and receive the benefit of the ministrations of the church, according to such a distribution of the duty of the incumbent as may best secure this object, that is, according to the opinion of the Bishop in this case, by alternate morning and evening services in the two churches. I see no reason to doubt that the general authority of the Ordinary in matters of this kind, recognised by the universal ecclesiastical law as inherent in the nature of his office, and necessary for the performance of the duties which are cast upon him, is properly applied to a case of this kind.

I think that the parishioners of Sydmonton are entitled to the performance of a service by their minister in their church every Sunday; that the Bishop has rightly exercised his discretion in commanding Mr. Rugg to perform this service; and I must formally admonish Mr. Rugg, as I now do, to obey the direction of his Ordinary.

It is right that I should call the serious attention of Mr. Rugg to the order of this Court. I am glad to perceive that he has the assistance of an experienced proctor, from whom he may learn, if not otherwise informed, that a disobedience to the order of this Court will be attended with the grave penal consequences which the law attaches to the offence of contumacy.

I must further, in the execution of my duty, condemn Mr. Rugg in all the costs of these proceedings.



THE OFFICE OF THE JUDGE PROMOTED BY  
THE BISHOP OF NORWICH v. PEARSE.

*In a criminal suit against a clerk in the Ecclesiastical Courts,  
the clerk himself is now competent to give evidence.*

THIS was a proceeding against a clerk for very heinous immorality. During the trial the defendant was tendered by his counsel as a witness, and I admitted his evidence.

In the end I gave judgment, on the 4th of June 1868, finding the charges proved, and sentencing the defendant to deprivation. The defendant appealed to the Privy Council, who affirmed my decision, but expressed no opinion as to the admissibility of the defendant's evidence.

Since then there have been three other proceedings against clerks for immorality, in each of which the defendant was examined before me. They were all appealed to the Privy Council, but I do not find that in any one of them any objection was made to the admissibility of the defendant's evidence.

This case is reported in the Arches Court, in the Law Reports, 2 Admiralty and Ecclesiastical, page 281.

I have given here such passages of the judgment only as decide on the admissibility of the evidence.

JUDGMENT.—The hearing of this cause has been attended with one remarkable circumstance. It furnishes, practically speaking, the first instance in which the accused clerk has been allowed to give his own personal evidence as a part of his

defence. It is right, that I should state fully the grounds upon which I came to the conclusion that such evidence was admissible; because the consequences of this decision, if it be correct, are obviously very important. It materially affects for good or for evil the administration of justice in these proceedings against criminous clerks. In my opinion the protection of innocence and the detection of guilt is promoted by the admissibility of this evidence, and the discovery of the truth—the proper end, I think, of all rules of evidence and legal procedure—facilitated. But such, I regret to say, was not the opinion of my distinguished predecessor in this seat, and this fact alone would render a statement of the reasons for a contrary opinion imperative upon me.

The question stands in this way. In the year 1843 was passed Lord Denman's memorable Act (6th and 7th Vict. c. 85) for improving the law of evidence, and it began in the language which never ought to be forgotten. "Whereas, the inquiry after truth in Courts of Justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue both in criminal and in civil cases should be laid before the persons who are appointed to decide upon them, and that such persons should exercise their judgments on the credit of the witnesses adduced and on the truth of their testimony: Now therefore be it enacted by the Queen's most Excellent Majesty, etc.

"That no person offered as a witness shall hereafter be excluded by reason of incapacity from crime or interest from giving evidence either in person or by depositions, according to the practice of the Court."

And so stood the law for a considerable time; but in the year 1851 progress was made in this department of jurisprudence, and the 14th and 15th Vict. c. 99, called "An Act to Amend the Law of Evidence," by the second section, enacted as follows: "On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any Court of Justice, or before any person having, by law, or by consent of parties, authority to hear, receive, and examine evidence, the parties thereto, and the persons in whose behalf any such suit, action, or other proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viva voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action, or other proceeding."

It is perfectly clear, therefore, from the general terms of this enactment, that all parties to suits were rendered capable and

compellable to give evidence, except as hereinafter excepted, and the exceptions are to be found in the following sections. The third section is: "Nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction competent or compellable to give evidence for or against himself or herself, or shall render any person compellable to answer any question tending to criminate himself or herself, or shall in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband." And the fourth section is: "Nothing herein contained shall apply to any action, suit, proceeding, or bill in any Court of Common Law or in any Ecclesiastical Court, or in either House of Parliament, instituted in consequence of adultery or to any action for breach of promise of marriage."

Subsequently to the passing of these Acts the Legislature has rendered it competent in the Divorce Court for the husband and the wife, if the suit be instituted in a particular manner, to give evidence in cases of adultery, and in cases of cruelty and impotency their evidence is continually admitted.

Now, my very learned and very distinguished predecessor, Dr. Lushington, in giving judgment in the case of *Burder v. O'Neill* (9 *Jurist*, N.S. 1109), after hearing arguments from me (I think Sir Robert Collier was opposed to me upon that occasion) on the admissibility of the evidence of an accused clerk, referred to these statutes which I have just referred to (it was in the year 1863), the 14th and 15th Vict. chapter 99, and then said:—"Assuming for the moment that the general terms used in this section would apply to the present case, and operate, standing alone, to make the evidence of Mr. O'Neill admissible, what is the effect of the third section? By that, no person who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction, shall be competent, or can be compelled, to give evidence for or against himself. Now I think it is by no means clear that the offence charged in these articles is not an indictable offence, or punishable on summary conviction. Looking at the pleadings and evidence, I incline to the opinion that it is so indictable or punishable. If I am right in this opinion, it will follow that I also did right in rejecting the application to examine Mr. O'Neill; for, according to the very words of the section, he is not a competent witness, and if not competent no consent or waiver of objection can make him so. But suppose I am in error in taking this view of the third section, I fall back

upon the second section, and I have come to the conclusion that the operation thereof does not extend to make Mr. O'Neill, or any other person in his situation a competent witness; and I adhere to this construction on the principles and authority of the case of *Hawkins v. Gathercole* (6 De Gex, Mac, and Gordon, p. 1; 1 *Jurist*, New Series, p. 481). Let me for a moment consider the consequences of holding that Mr. O'Neill is a competent witness. By the second section of the statute, if he be a competent witness, he is also compellable to give evidence, the effect of which will be that in a case resembling the present, in which character and pecuniary prospects are at stake, in which practically the issue is, whether the accused shall be disgraced and ruined, the accused may be compulsorily put upon his oath, and be compelled to take his choice between perjury or ruin—I cannot conceive that any proceeding could take place more utterly repugnant to the principles and practice of British law. But this is not all: the effect of finding Mr. O'Neill to be a competent witness, and consequently to be compelled to give evidence, will be to repeal the statute 13 Charles II. c. 12, sec. 4, by which the Ecclesiastical Courts are prohibited from administering an oath to any one, whereby such person may be charged, or compelled to confess, or accuse or to purge him or herself of any criminal matter or thing. I do not think that this statute is repealed. There is one more consideration. Look at the exception in the third section, and see the utter discrepancy which would arise in principle if such evidence could be given. A man is protected from giving evidence against himself in all petty offences cognisable by a magistrate, however small the penalty or slight the punishment on conviction; but if I be mistaken, a clergyman of the Church of England will not be exempted where the penalty may be disgrace and the loss of valuable preferment. It is true that possibly such an anomaly may exist, but sure I am that if legal principles will permit, every Court would be most anxious to avoid it. I am of opinion that even if the words of the second section could be so construed as to render such evidence admissible, the expressions are only general and not specific. I again say, that acting on the principles laid down with so much clearness in *Hawkins v. Gathercole*, and for the other reasons I have given, I adhere to my original ruling, and refuse to admit Mr. O'Neill's evidence." In a subsequent case, that of *The Bishop of Norwich v. Berney*, February 5th and 8th, 1867, in which, as counsel for the accused clerk, I brought to the attention of the Judicial Committee of the Privy Council this ruling of my learned predecessor as my reason for not having examined Mr. Berney upon a point as to which his evidence would have been very material,

their Lordships, in the course of the judgment which they delivered, observed that this question perhaps required reconsideration.

This is the first case which has happened since that observation was made, and I have thought myself, not only authorised, but bound to reconsider the question. In the first place, therefore, I think that the plain and true construction of the 14th and 15th Vict. c. 99 does not leave me at liberty to discuss the question of the expediency of admitting the evidence in question. As I read that statute, the first clauses render all parties in all suits competent witnesses. The latter clauses contain the catalogue of exceptions to the principles of general admissibility. In that catalogue parties to criminal suits in the Ecclesiastical Courts are not enumerated, and are therefore admissible as witnesses. But it is said, that if this proposition be generally true, it does not apply to cases where the offences charged against the clerk are, like the present, indictable or punishable by summary conviction. But again, I am obliged to dissent from this construction of the statute. I think that the words "in any criminal proceeding," refer to proceedings in which the Crown as guardian of the public weal is prosecutor; and not to suits which the common law denominates "criminal," and in which the prosecutor is the ordinary, or the promoter of his office, especially having regard to the words of the 4th section. Another objection is, that the statute of 13 Charles II. c. 12, is a special statute which forbids the examination of parties to these criminal suits, and the authority of Lord Justice Turner, in *Hawkins v. Gathercole*, for the position that a special statute can only be repealed by a special statute, is relied upon. The statute of 13 Charles II. c. 12, is thus entitled "An Act for Explanation of a Clause contained in an Act of Parliament made in the 17th year of the late King Charles, intituled 'An Act for Repeal of a Branch of a Statute *primo Elizabethæ* concerning Commissioners for Causes Ecclesiastical.'" And it then recites that errors had arisen by the repeal of the statute relating to the Commissioners for Causes Ecclesiastical, that is, the repeal of the statute which authorised the High Commission Court, and the 4th section is thus: "Provided also, and it is hereby further enacted, that it shall be lawful for any archbishop, bishop, vicar-general, chancellor, commissary, or any other spiritual or ecclesiastical judge, officer, or minister, or any other person having or exercising spiritual or ecclesiastical jurisdiction, to tender or administer unto any person whatsoever the oath usually called the oath *ex officio*, or any other oath whereby such person to whom the same is tendered or

administered, may be charged or *compelled to confess*, or accuse, or to *purge* him or herself of any criminal matter or thing whereby he or she may be liable to any censure or punishment; anything in this statute, or any other law, custom, or usage heretofore to the contrary hereof, in anywise notwithstanding."

I have read with care the judgment in *Hawkins v. Gathercole*, which I do not think it necessary to go into at length. I will only say that I do not think that the principles of construction which that decision lays down warrant the conclusion that any restriction on the admissibility of evidence imposed by 13 Car. II. c. 12 cannot be taken away by the language of the 14th and 15th Vict. c. 99. Lastly, the learned judge alleges the evil that would ensue if a clerk were to be allowed to give evidence "where the penalty might be disgrace and the loss of valuable preferment." I have already expressed my opinion upon this general subject; I must add that the other side of the question does not seem to have been considered, namely, the extreme hardship, I should say injustice, of allowing a clerk to be accused of any offence, however infamous, alleged to have been committed in the presence of the accuser alone, and supported by his testimony alone, and of sealing up the mouth of the accused, who, if innocent, may give a satisfactory refutation of the charge, and who, if guilty, ought not to be protected by a technical rule from exposure, more especially in a case where third parties, the parishioners, have a right to demand that the cure of their souls shall not be intrusted to a wicked pastor.

At this moment, in the Divorce Court, a husband accused of cruelty, which may include the commission of an unnatural crime, of impotency, of adultery, if the suit be instituted in a particular form, is a competent witness. Under what temptation is he placed to exculpate himself by perjury? In the Probate Court, Dr. Smethurst, whose counsel I was, was admitted, in a case where he was the party benefited under a will, to give evidence on the subject of it, though he had been found guilty of poisoning the maker of that will, by a sentence which was afterwards remitted; and in the civil suit he was cross-examined by Mr. Serjeant Ballantine as to all the circumstances of the alleged crime—on which, when tried for his life, his lips had been sealed by the law. But the other day, a party accused of obtaining, by undue influence, nearly half a million of money from an insane testator, gave evidence in favour of the will. Under what temptations were these persons to commit perjury? Certainly, according to the reasoning in *Burder v. O'Neill*, their evidence ought to be inadmissible.

I will not pursue the subject further. In my opinion the statute renders this species of evidence in this Court admissible ; and I do not think that the Court should endeavour to discover an ingenious construction of the statute for the purpose of excluding such evidence on the ground of the mischief consequent on its admission ; but, on the contrary, that for the sake of the administration of justice, both to the individual and the Church of which he is a minister, it ought to be ready to receive it.

Therefore, when the counsel for the defendant in this case tendered him as a witness, I overruled a formal objection made by the counsel for the promoter, and I allowed the defendant to be examined. . . . The law which made his evidence admissible did not of course remove these objections to its credibility which arise from the strong bias under which it must be given ; it must be admitted that in this case the defendant has the very strongest motives of interest by which a man can be swayed, to deny the charges now preferred against him. On the other hand, the improbability that an educated gentleman, and a clergyman of mature years and long standing in his profession should, deliberately commit the sin of perjury, has been strongly urged upon me ; and it has been truly said that this sin has been committed by him if the story which he has told is untrue. The argument deserves consideration, but I am afraid that on the assumption of guilt the man who committed these various abominations, at various periods, and with deliberate purpose, must have so polluted his mind and defiled his conscience as to render the commission of the additional sin of perjury in the hope of thereby escaping the loss of character, fortune, and station, not an improbable act, certainly not an act of such manifest improbability as to induce the Court on that ground alone to discredit, much less discard, the adverse testimony. The accused clerk is indeed entitled to the full benefit of those legitimate presumptions of innocence which arise from his character, his social position, and still more his holy calling. These presumptions are to be constantly borne in mind by the Court, and to be weighed in the scale against the inducements to perjury, which, on the assumption of guilt, the fear of detection and punishment would suggest.

THE OFFICE OF THE JUDGE PROMOTED BY  
RITCHINGS v. CORDINGLEY.

*It is not lawful for a churchwarden, though acting in pursuance of a resolution of the vestry, to break into the parish church and remove ornaments or articles placed therein by the incumbent, though such ornaments or articles had been so placed without a faculty and irregularly.*

*The rights of the churchwardens with respect to access to the church considered.*

THIS judgment was delivered on the 22d of July 1868. There was no appeal from it.

The case is reported in the Law Reports, 3 Admiralty and Ecclesiastical, page 113.

JUDGMENT.—This is a case which comes before this Court by letters of request from the Chancellor of Worcester. It is a suit instituted in a criminal form by the incumbent of Atherstone, Mr. Ritchings, against one of the churchwardens, Mr. Cordingley. The offences charged against this gentleman are,—entering the church by means of a picklock, contrary to the wish of the incumbent, and causing a ledge of wood, or, as it is called, a super-altar, to be violently removed from the holy table; breaking and throwing away the same, and also for injuring and removing the cloth which covered the holy table; and for removing certain sockets from a pillar on which banners were sometimes placed; and for violent and irreverent conduct on the part of himself and others in the church.

The defence on the part of Mr. Cordingley is that the incumbent refused to allow the keys of the church for the purpose of entering therein, and that the articles in question had been put up illegally without a faculty, and were violently removed by the churchwardens under sanction of the vestry.



The material facts, which have been admitted or proved before me in evidence, are as follows:—It appears that about Christmas 1865 this ledge was placed on the holy table by Mr. Ritchings, or with his permission, and that it has remained there from that time till it was taken away by Mr. Cordingley. No objection was raised till Easter 1866, and it was there when the bishop held a confirmation in the church in 1867. This addition, however, to the holy table was made without the consent of the ordinary, either informally expressed, or formally through the medium of a faculty. This is much to be lamented, because the alteration, whether legal or not, was of that character which ought to have been submitted to the discretion of the ordinary, in order that he might judge whether the introduction of it was or was not expedient at that time and in the particular circumstances of the parish.

On the 22d of August 1867 a vestry meeting was holden, which was adjourned to the town-hall. How it was summoned does not appear, but it was preceded by a printed placard, headed "Ritualism," and, certainly, was not of a character to produce fair, temperate, decent, or quiet discussion. I am not surprised that nobody should have been willing to own that he was in any way concerned with it. At this vestry a resolution was passed that the churchwardens, that is both of them, should take steps for removing the super-altar.

On the next morning, the 23d of August, Mr. Cordingley sent to Mr. Ritchings for the keys of the church. Mr. Ritchings sent word to him by Allcock, the other churchwarden, that he, Mr. Ritchings, was going to church at eleven, and that he would wait for him till one o'clock. Mr. Cordingley then said that if the keys were not placed in his hands "he would break open the church door, or make it so that nobody could open it."

Mr. Ritchings went accordingly to the church and stayed till twenty minutes to one, when he wrote to Mr. Cordingley as follows:—

*"Atherstone, August 23, 1867.*

"SIR,—In future when you want access to the church as churchwarden, I must request you to name the time and to give me the reasonable notice to which I am entitled. The church has been open from eleven o'clock till service-time, at twelve, to suit your convenience.

"I repeat that you can, by applying to me, have access to the church at any reasonable hour, but I shall not give up the keys. —I am your obedient servant,

F. H. RITCHINGS.

"To Mr. Cordingley."

To this letter Mr. Ritchings received no answer. As a

general rule Mr. Ritchings says he refused to give Mr. Cordingley the keys of the church, but did not refuse him access; on the contrary, he said that upon reasonable notice he might always have it. It appears, however, that on two occasions, one being the 22d of August, he refused to allow the bells to be rung to give notice of a vestry meeting.

About one o'clock, Scanlan, a locksmith in the employment of Wood, arrived by Cordingley's order with a picklock in his hand, and proceeded to pick the lock of the church door. Mr. Husband, the curate, who was present, warned him that the act was illegal; the man hesitated, but under the orders of Cordingley proceeded; the lock was picked, the church was entered. Scanlan, with a hammer and chisel in his hand, entered the communion rails, pulled out the nails which fastened the cloth to the holy table, took off the ledge or super-altar—according to Mr. Husband's evidence Cordingley dashed the super-altar with such violence on the floor that it was broken at one end,—and it was then thrown into a place where coals were kept. The sockets were also forcibly removed from the pillars. The cloth of the holy table was taken to an upholsterer by Cordingley, and by him directed to be altered; the other churchwarden afterwards obtained possession of it, and the holy communion table remained uncovered for one or two weeks. While the house of God was the scene of these transactions, other persons, as must have been expected, came into the porch and the body of the church, one man wearing his hat, and alleging that he did so because he was not in a place of Protestant worship; a melancholy and miserable, but natural, example of what men, respectable in private life, will do under the effect of violent religious excitement, when they—to use a common but very expressive phrase—"take the law into their own hands."

The counsel for the defendant exerted himself to the utmost to palliate acts which he must have known to be incapable of vindication. First, it was maintained or suggested that one churchwarden had, under the sanction of the vestry, authority to do these acts, both without the concurrence of his colleague or the authority of his ordinary. As a matter of fact, the vestry did not pretend to authorise one churchwarden to act in this way; as a matter of law they had no power to authorise both to do so. It is not competent to the vestry to alter the law, or to substitute their own will and pleasure for it, or to clothe by any resolution both, still less one churchwarden, with an authority not inherent in his office. In the well-known case of *Palmer v. Bishop of Exon*,<sup>1</sup> it was decided by the King's

<sup>1</sup> 1 Str. 576.

Bench that "the ordinary" (not the vestry or the churchwardens) "was to judge what ornaments were proper, and might order them to be defaced."

I will now deal with the argument that one churchwarden can, with or without the sanction of the vestry, act independently of his colleague. With regard to the case of *Shaw v. Hislop*,<sup>1</sup> it seems to me adverse to the case of the defendant. It establishes the position that where one churchwarden has incurred a debt on behalf of the parish without the order of his co-churchwarden, he must be considered to have incurred it on his personal liability, and not in his corporate or quasi-corporate character.

The case of *Gouldsworth v. Knights*,<sup>2</sup> which was also cited, only decided that the Act 59 Geo. III. c. 12, s. 17, made the churchwardens and overseers a corporation of a peculiar character, and that it was competent for any one of them to authorise a distress for rent in arrear.

The case of *Fry v. Treasure*,<sup>3</sup> to which I referred counsel in the course of the argument, is a very strong decision against the position that one churchwarden can act alone and without the consent of his co-churchwarden, even in matters which must be beneficial to the parish. The Judicial Committee of the Privy Council confirmed the judgment of the Court of Arches, and decided in that case that one churchwarden could not sue alone, without the concurrence and joinder of his colleague, in a suit against a parishioner for subtraction of church rate, nor use the name of his co-churchwarden without the consent of the latter; their Lordships say: <sup>4</sup> "But necessity, it was urged, requires that in the case of the churchwardens each should be deemed to be invested with an implied authority to use the name of the other in suits for the benefit of the parish, or, at all events, in suits for subtraction of church rate, for that otherwise it might be impossible to collect the rate. There is, however, nothing to warrant such an argument;" and again their Lordships say: <sup>5</sup> "The course pursued can only be justified on the assumption that in every suit for subtraction of church rate one churchwarden may always use the name of a co-churchwarden, as a co-plaintiff, without any authority from him. For such a proposition there is no warrant either in principle or on authority." So that it must now be considered to be settled law that, where the majority of the vestry have imposed a rate and authorised the churchwardens to collect it for the benefit of the parish, they cannot empower one church-

<sup>1</sup> 4 D. & R. 241.

<sup>2</sup> 11 M. & W. 337.

<sup>3</sup> 2 Moo. P. C. (N. S.) 539.

<sup>4</sup> 2 Moo. P. C. (N. S.) at p. 554.

<sup>5</sup> 2 Moo. P. C. (N. S.) at p. 554-5.

warden to take legal proceedings without the consent of his colleague. The law provides another remedy, as was suggested by the Privy Council, namely, the removal of the recusant churchwarden; but the law will not allow a principle to be broken down in order to attain an end in itself expedient and desirable.

The application of this doctrine to the circumstances in the present case is obvious and material. Observe the necessary, and, indeed, the admitted consequences of the defendant's position. Some ornament or piece of furniture is placed in a church, perhaps, as in this case, connected with the administration of the Blessed Sacrament of the Lord's Supper. One churchwarden is offended by it, either as a matter of religious feeling or of mere taste; and without consulting or directly contravening the wish of his brother churchwarden, he proceeds by force to enter the church, by force to remove the ornament; the next day the other churchwarden, to whose religious feelings or taste the ornament is agreeable, proceeds by force to restore the ornament; the next day it is again removed, the day after again replaced in the same manner. Or perhaps the two churchwardens meet each other at the head of an army of followers, one with a picklock and a placard, as in this case, "Protestantism and no Ritualism;" and the other with a crowbar, as in the case of *Dewdney v. Good*,<sup>1</sup> and a banner with "The Catholic Faith." Could the worst enemy of the Church of England, Popish or Protestant, desire her to be placed in a more humiliating position? Would there be any end to the irreligious scoffs, gibes, and jests which such scenes would produce? Could the Church of Rome devise better assistance to her hourly increasing aggressions against the Church of England? Could the enemy of the Establishment, who desires to sever the connection of the Church with the State—the subject upon which men's minds are now so agitated—be more gratified than by such a result of discord and scandal?

I am happy to know that the law of our Church neither permits such scandalous proceedings, nor is impotent to punish those who are the authors of them. Independently of the ecclesiastical law, I am much inclined to think that this was a case of "brawling and riotous conduct in a church," which founded the jurisdiction of the magistrates under the recent and valuable statute, 23 and 24 Vict. c. 32, s. 2. It is true that one churchwarden only acted in this case, but I consider it expedient, for the peace of parishes in these times of excited religious feeling, that no doubt should exist as to the limits

<sup>1</sup> 7 Jur. (N. S.) 637.

within which the authority of the churchwarden is to be exercised.

They are the officers of the ordinary and the parish, and the first principle is that their authority, even in matters within their especial cognisance, must be exercised under the control of the ordinary. Take, for instance, the arrangements of sittings in the nave of the church. The general disposal of seats in the nave, and to a certain extent in the chancel, appertains to the churchwardens, though, perhaps, even this doctrine must receive some limitation where the seats are all moveable, or where chairs alone are in use; but as Sir W. Wynne, one of my most distinguished predecessors in this chair, observed, "this is for convenience, and for the preservation of peace and quiet. But this right is not to be used arbitrarily, not without considering whether there be any legal or equitable right. If the churchwardens interfere to take away a seat, and, *à fortiori*, to take it to themselves, the ordinary will interfere . . . *Drury v. Harrison*.<sup>1</sup> So, in *Parham v. Templar*,<sup>2</sup> decided by Sir John Nicholl, the churchwardens are spoken of as "acting under the ordinary."<sup>3</sup> And, in the same case, it is said: "The churchwardens may remove persons originally placed in seats, or their descendants; but if they do so capriciously, or without just ground, the ordinary will control and correct them."<sup>3</sup>

Upon the general question of the duties and powers of churchwardens it would be impossible to find a better statement, or one coming from a higher authority, than that which is laid down by Lord Stowell in the following judgment in *Hutchins v. Denziloe*:<sup>4</sup> "The first point is, whether these churchwardens have a right to interfere in the service of the church, as, if that interference is legal in any case, it is so in the present. To ascertain this, it is proper to consider what are their duties, and I conceive that originally they were confined to the care of the ecclesiastical property of the parish, over which they exercised a discretionary power for specific purposes. In all other respects it is an office of observation and complaint, but not of control, with respect to divine worship; so it is laid down in Ayliffe, in one of the best dissertations on the duties of churchwardens, and in the canons of 1571. In these it is observed that churchwardens are appointed to provide the furniture of the church, the bread and wine for the holy sacrament, the surplice, and the books necessary for the performance of divine worship, and such as are directed by law, but it is the minister who has the *use*. If, indeed, he errs in this respect, it is just

<sup>1</sup> 3 Phillim. 515, n.

<sup>3</sup> 3 *ibid.* at p. 523.

<sup>2</sup> 3 *ibid.* 515.

<sup>\*</sup> 1 Hagg. Const. at p. 173.

matter of complaint, which the churchwardens are obliged to attend to; but the law would not oblige them to complain if they had a power in themselves to redress the abuse. In the service, the churchwardens have nothing to do but to collect the alms at the offertory, and they may refuse the admission of strange preachers into the pulpit. For this purpose they are authorised by the canon, but *how*? When letters of orders are produced their authority ceases. Again, if the minister introduce any irregularity into the service, they have no authority to interfere, but they may complain to the ordinary of his conduct. I do not say there may not be cases where they may be bound to interpose; in such cases they may repress, and ought to repress, all indecent interruptions of the service by others, and are the most proper persons to repress them, and they desert their duty if they do not. And if a case could be imagined in which even a preacher himself was guilty of any act grossly offensive, either from natural infirmity or from disorderly habits, I will not say that the churchwardens, and even private persons, might not interpose to preserve the decorum of public worship. But that is a case of instant and overbearing necessity that supersedes all ordinary rules. In cases which fall short of such a singular pressure, and can await the remedy of a proper legal complaint, that is the only proper mode to be pursued by a churchwarden."

I have carefully considered the chapter in Ayliffe referred to by Lord Stowell, and I find it entirely in accordance with his view. I was also referred by Mr. Stephens<sup>1</sup> to a judgment delivered by myself in the Consistory of Oxford, reported at length by Dr. Swabey in the "Law Times," *The Churchwarden of Ensham v. The Vicar of Ensham*,<sup>2</sup> as containing a correct exposition of the law upon this subject. I am not aware that it in any way conflicts with the principles of the judgment which I am about to deliver. Indeed, the whole doctrine of presentments by the churchwardens is founded upon the fact that this office is one of "observation and complaint," and, except in extraordinary emergencies, not one of immediate action or exercise of individual power. There would be no necessity for presentment to the ordinary at all, if the churchwardens might take the law into their own hands, and remove, without reference to him, whatever they conceived to be illegal in the ornaments of the church.

In the Knightsbridge cases, *Westerton v. Liddell* and *Beal v. Liddell*,<sup>3</sup> the proper course was adopted; the power of the

<sup>1</sup> One of the counsel for the defendant.

<sup>2</sup> 29 L. T. 402.

<sup>3</sup> Moore's Special Report.

ordinary was invoked to remove illegal ornaments; and the result proved the wisdom of this proceeding; for the churchwarden would in that case have removed many ornaments which the Judicial Committee eventually pronounced to be legal.

In the present case the churchwarden removed altogether the ledge which was upon the holy table. Now the decision of the Judicial Committee of the Privy Council in *Liddell v. Beal*<sup>1</sup> established that the addition of a wooden ledge to the holy table, called in that as in this case a super-altar, which is not fastened to the table so as to be immoveable, is a legal ornament; their Lordships say that when the Lord's Supper is administered the ledge might be removed and replaced upon the table "for the purpose of holding candlesticks and vessels;" and it is said in that judgment, "it is not shown, and their Lordships think it ought not to be inferred, that there is anything superstitious (if the term may be used) or anything improper in the addition of that ledge." Much has been said in this case upon the point as to whether or not the ledge was attached to the holy table so as to be immoveable; it certainly was not fastened to the holy table itself, but there is a doubt upon the evidence whether it was not so attached to the cloth as to necessitate the removal of the cloth when the ledge was removed. I am not prepared to say that even in this case it would not fall within the principle of permission in *Liddell v. Beal*.<sup>1</sup> But assuming this not to be so, observe the error of the churchwarden's conduct; he evidently thought that the addition of the ledge was, *per se*, illegal; he did not unfasten it from the cloth and replace it as the law (if he had any power at all in the matter) could have required him to have done, but he caused it to be detached from the cloth and removed altogether, and put away in a coal-hole. I may remark here that my surprise, that any churchwarden should have dealt so irreverently with what had been for some years connected with the holy table, was diminished by the subsequent evidence in the case. From that evidence it appeared that when Mr. Cordingley was first chosen churchwarden he honestly and expressly stated that he was not a member of any church, which he explained in this Court to mean that he had never been a communicant. It was certainly a strange and ill-advised choice by the parishioners in the first instance, and I think it reflects credit upon Mr. Cordingley that he was aware of the impropriety of his occupying this position, and with reluctance he accepted it, contrary to his wishes. He said in

<sup>1</sup> 14 Moo. P. C. 1.

this Court, "I have never communicated, and I have always had a great reluctance to be churchwarden."

It cannot be too plainly stated that, without reference to extreme and exceptional cases, which afford no test of the law, ornaments which have once been *de facto*, though illegally or irregularly, placed in the church, must be legally, that is, under the sanction of the ordinary, removed. This is a position no less sound in law than essential for the peace of parishes. Lord Stowell applied this principle to the matter of removing monuments in churches. "It is alleged," he says, "that the rector had given his consent that the monument should be taken down, which, however, is denied. But the taking down of the monument would be an offence for which also the party would be liable to prosecution; since, when once erected, it cannot be removed without the sanction of the Ordinary. The consent of the rector, therefore, would not be sufficient:" *Maidman v. Malpas*.<sup>1</sup>

Lastly, it has been urged in mitigation of the conduct of the churchwarden that he had a right, not merely of access to the church at proper seasons, but to the custody of the keys of the church. *Jarratt v. Steele*<sup>2</sup> was relied upon for this position. In that case Sir John Nicholl observed: "All persons ought to understand that the sacred edifice of the church is under the protection of the ecclesiastical laws as they are administered in these Courts; that the possession of the church is in the minister and the churchwardens; and that no person has a right to enter it when it is not open for divine service, except with their permission and under their authority." Lord Chief Justice Erle's judgment, too, in *Griffin v. Dighton*,<sup>3</sup> was much relied upon, in which he recites this passage as the foundation of his own judgment, adding: "That is a perfectly sound exposition of the law in the temporal as well as in the ecclesiastical courts. The *domus mansionalis Omnipotentis Dei* is not to be turned from the purpose which that name expresses, and the minister and churchwardens are entitled to have possession of the church, and to have free access to it at all times." It has been endeavoured to extract from this language of Sir John Nicholl in *Jarratt v. Steele*,<sup>4</sup> the position that the freehold of the church is in the churchwardens as well as in the incumbent, or, at least, that the custody of the church is equally vested in both parties, and therefore that the churchwardens must be entitled to the keys of the church equally with the incumbent. But this is a position which even the letter of the

<sup>1</sup> 1 Hagg. Const. at p. 212.

<sup>2</sup> 5 B. & S. 114; 333 L. J. (Q. B.) 182.

<sup>3</sup> 3 Phillim. 167, 169.

<sup>4</sup> 3 Phillim. 167.



judgment does not warrant, and which is directly at variance with the common law and a series of decisions upon the subject, and most especially with the decision of the same learned judge in the later and very carefully considered case of *Lee v. Mathews*.<sup>1</sup> Observe his language in this case. "On the other hand," he says, "the minister kept possession of the keys of the church; and, as it should seem, in order to prevent this painting at that particular time; and surely the minister of the parish is the fittest person to decide at what season the public worship may be suspended with least inconvenience to the religious duties of the parishioners. This vestry was called for the purpose of ordering an additional key of the church to be made for the use of the parish churchwarden. This was very irregular; for the minister has, in the first instance, the right to the possession of the key, and the churchwardens have only the custody of the church under him. If the minister refuses access to the church on fitting occasions, he will be set right on application and complaint to higher authorities." The same doctrine is referred to by Dr. Lushington in the recent case of *Dewdney v. Good*<sup>2</sup> as one of the best established axioms of ecclesiastical law. In that case, decided in the Court of Arches in the year 1861, reported with his usual accuracy by Dr. Middleton in *The Jurist*, the churchwardens of the parish of Gussage, in Dorsetshire, accompanied by another parishioner, and acting upon a resolution of the vestry, but against the express prohibition of the rector, and without any authority from the bishop, broke open with a crowbar the principal door of the church, and, with the assistance of some workmen, proceeded to alter the position of the pulpit, and to pull down and re-arrange certain of the seats within the church, and the learned judge, Dr. Lushington, most strongly held that all who had taken part in those proceedings had been guilty of a grave ecclesiastical offence.

In this case the promoter of the office has withdrawn that portion of his prayer which requested the Court to order the restitution of the articles which had been illegally removed, and the Court is now only prayed to admonish Mr. Cordingley to abstain from such illegal conduct for the future, and to condemn him in the costs which that conduct has occasioned.

I must not forget that there is evidence before me that the offender was not ignorant of the law applicable to this case, and perhaps I am hardly justified in not following in every respect the precedent set me by Dr. Lushington in the recent

<sup>1</sup> 3 Hagg. Ecc. 169, 173.

<sup>2</sup> 7 Jur. (N. S.) 637.

case of *Dewdney v. Good*,<sup>1</sup> and in condemning Mr. Cordingley in all the expenses of this suit.

But, having regard to the fact that when this cause first came before me I suggested that the parties should agree upon a statement of the facts, and take the opinion of the Court upon the question of law ; that this proposition, which would have most materially diminished the expenses of the suit, was accepted by Mr. Cordingley and not entertained by the promoter ; and also having especial regard to the fact that these ornaments were put up without the previous or subsequent sanction of the ordinary, that is, without an original faculty or by a faculty to confirm, I shall not condemn Mr. Cordingley in the whole expenses of the suit. I admonish him to abstain from such illegal practices for the future, and I condemn him in the sum of £100 *nomine expensarum*.

<sup>1</sup> 7 Jur. (N. S.) 637.

## THE OFFICE OF THE JUDGE PROMOTED BY

### LEE v. MEREST.

*A clergyman convicted of simony and another offence—Sentence: deprivation of his living, coupled with prohibition to discharge all clerical functions within the Province of Canterbury—Notice ordered to be given to the Queen's Proctor in order that Her Majesty might exercise her right of presentation to the benefice voided.*

THIS judgment was given on the 26th of November 1869. The defendant had entered an appearance in the suit by a proctor; but he took no part at the hearing of the cause. There was no appeal.

The case is reported in the Law Journal, 39 Ecclesiastical, page 52.

JUDGMENT.—In this case the office of the Judge is promoted by the secretary of the Lord Bishop of Worcester against James John Merest, clerk in holy orders and *de facto* vicar of the parish of Upton Snodsbury, in the county and diocese of Worcester. The case is sent by letters of request to this Court under 3 and 4 Vict. cap. 86 in the first instance. The offences charged against the clerk are two: First, that of simony, by reason of his having corruptly and simoniacally obtained presentation and institution to his vicarage; secondly, that of conduct unbecoming a clergyman, in unlawfully threatening the Rev. Murray Richard Workman to publish a libel upon him with the intent of extorting money, of which offence he was duly convicted at the Assizes for the county of Worcester, held on the 4th of March 1869. This conviction for this offence was duly proved before me by the record of the conviction produced by the clerk of indictments on the Oxford Circuit.

Upon the charge of simony the evidence may be briefly stated as follows: A certain Mr. O'Donnell was patron and incumbent of the benefice of Upton Snodsbury at the beginning of the year 1868. He sold the advowson to the Rev. Murray Richard Workman, at whose prosecution the defendant has been convicted for the offence which I have mentioned. The deed of conveyance was produced and read before me, and bore date February 29, 1868. The purchase-money was £400.

Mr. O'Donnell resigned the living on the 24th of March 1868, and his resignation was accepted on the following day by the Bishop. On the 27th of May the defendant was presented by Mr. Workman to the benefice. On the 10th of June Mr. Workman brought an action against the defendant for the sum of £350, and on the 22d recovered that sum, judgment being allowed to go by default, "by arrangement," as Mr. Workman in his evidence said, between the parties. Mr. Workman afterwards issued execution on his property, and levied £5. On the 3d of August the defendant was instituted, upon the presentation of Mr. Workman, to the benefice.

The dates of these transactions, taken in conjunction with their character, and with the profession of the parties, all of whom, I regret to say, were clergymen, are calculated of themselves to excite a grave suspicion of corrupt practices connected with the presentation of this living. That suspicion has been turned into complete proof by the evidence which has been adduced before me. The defendant, who has appeared in the suit by a proctor, has not appeared by counsel or in person before me in Court; he has declined to plead any defence or give any issue; but by his proctor, who is still before the Court, has prayed justice.

It appears from the evidence that some quarrel took place between Mr. Workman and the defendant, from which probably has arisen the means of unravelling this transaction. Certain letters were produced in evidence before me, and were proved to have been used before the magistrate who committed the defendant for trial at Worcester. Among these letters were two, which Mr. Workman proved were in his handwriting, and were produced to him by the defendant's solicitor, when he, Workman, was cross-examined by the solicitor. The first letter bears date Nov. 19, 1867, and is as follows:—

"Church and School Gazette Office.

"10 Southampton St., Strand, W.C.,

"Nov. 19th, 1867.

"MY DEAR SIR,—As all the smaller livings are very dear in proportion, and your capital is not sufficient to obtain one with

possession, I propose getting some assistance for you, but in doing this I must act without your knowledge, or my endeavours might be abortive. Hence I am silent for your own sake, and you also must be the same. Suffice it to say that the course I propose will cost you nothing. I wish to have Marston in Derbyshire for you, and failing that a rectory in North Devon, worth £160 and a house. This, however, is dearer, and Marston must be had if possible. You should not attempt Branksea when the weather is bad.—Yours faithfully, M. R. WORKMAN.

“The Rev. J. J. Merest.

“P.S.—You must preserve the strictest silence about the names of any livings mentioned to you, or your succession will be prevented.”

The second letter is dated Dec. 19, 1867, and is as follows :—

‘Church and School Gazette Office.

“10 Southampton St., Strand, W.C.,  
Dec. 19th, 1867.

“MY DEAR SIR,—I enclose a copy of another letter for the Bishop, which please send at once. The whole affair has been so far conducted very cleverly, and I am anxious for you not to spoil it by the least injudicious act or word. I have no time for more upon this subject to-day. As regards Upton Snodsbury, the income is from tithe and glebe, and the present net £120 about, capable of improvement. There is only single duty, and each Rector has either held a curacy of £80, or made that extra by occasional duty. It is three miles from Spetchly, and six from Worcester. There is no house at present, but will be one shortly, and in the meantime you can have reasonable lodgings either at Spetchly or nearer into Worcester. It is a very nice place indeed, and to my mind you could not have a more eligible little living. It is the *presentation*, not advowson. You have not enough money for the latter, and these small livings are all much dearer in proportion. In fact they are most difficult to get hold of at all, and the trouble and difficulty I have for you cannot well be told. I spoke of Marston, but you would have to wait some time for it, and Upton is nicer. I withheld the name, having promised to do so, till I heard definitively from your uncle, but he will render no help, and you want a small sum. I have now applied elsewhere, and if I can arrange all things, I shall have to see you. I can help you to improve the income of Upton, and you can go to it at

once. It is the cheapest and the nicest thing I can get for you, and for some time to come the only one likely.—Yours faithfully,

M. R. WORKMAN.

“The Rev. J. J. Merest.”

“Your uncle’s allowance will not come till about Jany. 6th, and he must *not be* asked for it. I enclose a cheque for £5.”

Mr. Workman said he had no doubt he had received answers to these letters, but he had not kept them.

Taking these letters with their history, as proved in this Court, in conjunction with the dates and the transactions to which I have referred, especially the transaction by which judgment for £350 was recovered “by arrangement” between the presentee and the patron, it would be difficult to doubt that the presentation to this living was the result of a corrupt and simoniacal contract between the patron and the presentee. But that difficulty becomes a moral impossibility, when it is remembered that it was competent to the defendant, as his proctor must have informed him, to have entered the witness-box, and have rebutted by an explanation, if such were in his power, the otherwise irresistible influence of guilt arising from the testimony and the circumstances to which I have adverted.

I am of opinion that the promoter of my office has proved both the charges laid in the articles against the defendant. It is not necessary that I should refer to authorities for the purpose of establishing the jurisdiction of this Court in cases of simony. That authority, both as it rests upon the general Ecclesiastical law and upon the Statute law, cannot be gainsaid; though happily the reported instances in which it has been exerted have been few and far between. The cases will be found collected under the title “Simony,” in the last edition of *Burn’s Ecclesiastical Law*, vol. iii. By the general law, and by the 40th Canon of 1604, as by the statute 31 Eliz. c. 6, the offence of simony is considered as one of a very grave character; and, though the oath formerly taken under the 40th Canon by the presentee against simony has been abolished by 28 and 29 Vict. c. 122, by the second section of that statute a solemn declaration against simony has been substituted for it. The defendant, though not technically guilty of perjury, must have deliberately made, upon a very solemn occasion, a very solemn declaration which he knew at the time he made it to be absolutely false. The statute 12 Anne, Stat. ii. c. 12, has not, as far as I am aware, been ever put in force by the Ecclesiastical Court. By the second section of that statute, the obtaining by a clergyman the next avoidance of or next presentation to

any benefice is treated as a simoniacal contract, and the presentation and institution are to be utterly void, frustrate, and of no effect in law, the simoniacal presentee is to be adjudged a disabled person in law to have the same benefice, and the Crown is to present for the next term. I see no reason why this statute should not be put in force by this Court; but I found my sentence as well upon the general Ecclesiastical as the Statute law. I must, in accordance with the exigency of the law, pronounce that the defendant is a disabled person in law to have or enjoy the vicarage and parish church of Upton Snodsbury, that his presentation thereto and his admission and institution thereupon are void and frustrate and of no effect in law;—and, having regard to all the circumstances of this case, and the offence of misconduct apart from the charge of simony proved against him, I must pronounce upon the defendant a sentence of deprivation from the ministry and from the performance of all clerical functions whatsoever in the Province of Canterbury; and I must order this sentence to be promulgated in the usual manner by affixing the same to the door of the church of Upton Snodsbury for the usual time: I must further condemn the defendant in the costs of this suit. I shall also direct the registrar to apprise the Queen's Proctor of this sentence, in order that her Majesty may exercise the right of presentation to the vacant benefice given by the statute.

THE OFFICE OF THE JUDGE PROMOTED BY  
THE BISHOP OF WINCHESTER v. WIX.

*A Bishop, who in his official capacity had instituted a suit against a clerk within his diocese, resigned his see while the suit was pending.*

*Held that the suit might nevertheless continue, with a change of title, and a fresh authority to sue given by the Bishop in his private name.*

THIS judgment was given on the 18th of November 1869. There was no appeal.<sup>1</sup> The case is reported in the Law Reports, 3 Admiralty and Ecclesiastical, page 19.

JUDGMENT.—The question raised in this cause is novel in practice, and the registrar, after a very careful search, has been unable to find any direct precedent, but it is not difficult to decide according to principle. The clear and able argument of Mr. Charles<sup>2</sup> was founded upon the presumption that this Court would proceed according to certain analogies of the common law. But I must recollect the observation made by Lord Wensleydale, delivering the judgment of the Privy Council in the case of *Sherwood v. Ray*,<sup>3</sup> that the proceedings of the Ecclesiastical Courts are not governed by the rules of the common law, or any analogies which they furnish. I am certainly not inclined to follow the analogy of those rules, which were in force before the system of common-law procedure had been subjected to the reformation it has since undergone. I must dismiss these analogies altogether from my consideration.

It is necessary to consider carefully the course of proceedings

<sup>1</sup> *Vide infra*, *Sumner v. Wix*.

<sup>2</sup> The counsel for the defendant.

<sup>3</sup> 1 Moo. P. C. at p. 397.



in this case. The letters of request have been duly sent to this Court; the Court had accepted those letters, and issued process to bring the accused party before it, and the accused party had appeared, and was properly before the Court prior to the time when the late Bishop of Winchester resigned his see. In the first instance it rested with the late Bishop of Winchester, in the exercise of his episcopal office, to determine whether the suit should proceed or not, and in what manner; he was invested with a discretionary power to cause his office to be promoted before himself, or to send the case by letters of request to be heard before this Court, either appointing a private person (his secretary, for instance) to carry on the proceedings in his own name, or by appearing himself as a voluntary promoter of the office of the Judge. He has exercised his discretion by adopting the latter course. This discretion he exercised before he resigned his see, and as soon as this Court became properly in possession of the cause the Bishop in his official capacity had no longer any control over the proceedings. It is true the late Bishop is the promoter of this cause, but, as I have said, a private person might, with his sanction, have acted as the promoter. The promoter of the office of this Court must not be confounded with the promoter of the office of the Bishop of Winchester. The cause being now in this Court, it is the office of the Archbishop of Canterbury, acting through this Court, that is being promoted. When this is borne in mind, the question now raised appears to be one of extreme simplicity. It is this, whether the promoter, having by reason of his resignation of the see of Winchester ceased to bear the designation or title which he bore when he first instituted this suit, the Court shall allow this suit to proceed with the alteration in the title of it which is thus rendered necessary, and which is now prayed for by the promoter. I am of opinion the Court must allow the suit to proceed with the alteration of the title of the promoter. I doubt whether I have any discretion in the matter, but if I have a discretion, I am certain I ought not to allow (having regard to the principles which govern the practice of this Court) a technical objection of this kind to prevail. I must dismiss the defendant's petition. I order the title of the cause to be amended according to the prayer of the promoter. A new proxy must be given in Bishop Sumner's own name.

THE OFFICE OF THE JUDGE PROMOTED BY  
BISHOP SUMNER v. WIX.

*Certain uses of lighted candles and of incense during Divine Service declared unlawful.*

THIS is the same case as to that which the last judgment (*The Bishop of Winchester v. Wix*) relates, continued under its new title.

I gave the following final judgment in it on the 3d of February 1870, at the same time as I gave judgment in the next case, that of *Elphinstone v. Purchas*.<sup>1</sup>

There was no appeal in this case.

The case is reported in the Law Reports, 3 Admiralty and Ecclesiastical, page 58.

JUDGMENT.—In this case the office of the Judge is promoted by the late Bishop of Winchester against the Rev. Richard Hooker Edward Wix, Vicar of St. Michael and All Angels, Swanmore, in the Isle of Wight.

The case comes before this Court by letters of request from the diocese of Winchester, and Bishop Sumner having ceased to be bishop of the see of Winchester continues to be the promoter of the suit.<sup>2</sup>

The defendant is charged with the ecclesiastical offences of adding to the ceremonies and rites prescribed by the law to be used in church, by the burning of lights and the use of incense.

The charges with respect to the burning of lights are contained in the following articles :—

<sup>1</sup> *Vide infra.*

<sup>2</sup> *Vide supra, Bishop of Winchester v. Wix.*

“3d. That the said Richard Hooker Edward Wix, in the church of the said perpetual curacy or vicarage of St. Michael and All Angels, Swanmore, on the following Sundays, to wit, on the 7th day of February, on the 28th day of March, on the 18th day of April, and on the 23d day of May, all in the year 1869, used lighted candles on the communion table in the said church, or on a ledge or shelf immediately above the said communion table; the said ledge or shelf having the appearance of being affixed to and of forming part of the said communion table; during the celebration of the Holy Communion at times when such lighted candles were not required for the purpose of giving light, and permitted and sanctioned such use of lighted candles.”

“5th. That the said Richard Hooker Edward Wix, in the said church on the following Sundays, to wit, on the 28th day of March, on the 18th day of April, and on the 23d day of May, all in the year 1869, used lighted candles placed in candlesticks standing on each side of the communion table during the celebration of the Holy Communion, at times when such lighted candles were not required for the purpose of giving light, and permitted and sanctioned such use of lighted candles.”

“7th. That the said Richard Hooker Edward Wix, in the said church, on Sunday the 28th day of March 1869, caused or permitted two lighted candles to be held, one on each side of the priest when reading the Gospel, such lighted candles not being then required for the purpose of giving light.”

I will deal with the last article first, because it is admitted on behalf of the promoter, that the practice therein complained of has been *de facto* discontinued by Mr. Wix since the service upon him of a monition by the Bishop, dated the 3d of April in last year, and before the commencement of this suit; at the same time Mr. Wix contends that the practice is lawful, and the judgment of the Court is prayed by the promoter thereupon.

I am of opinion that the practice charged in this article is unlawful, as an addition to the rites or ceremonies prescribed by the law. I am glad therefore, that Mr. Wix obeyed the monition of his Ordinary, and must admonish him not to return to the use of this practice.

With respect to the charge contained in the 3d article, Mr. Wix offers the following defence in his responsive plea (3d article):—

He says the charge against him,—

“Is in part untruly pleaded, for he alleges that on the said days in the said third article mentioned, the said lighted candles were not placed on the communion table, or on a ledge or shelf

immediately above the same as therein alleged, but upon a certain other table called a retable, the said retable standing distinct and separate from and not forming or appearing to form part of, and not being affixed or appearing to be affixed to, the said communion table."

And he denies that the use of such lighted candles is an unlawful addition to or deviation from the forms prescribed by the law.

With respect to the charge in the 5th article, the defendant admits the fact to be true as stated, but makes a similar denial with respect to the law.

The charges with respect to the unlawful use of incense are contained in the following articles:—

"9th. That the said Richard Hooker Edward Wix, in the said church on the following Sundays, to wit, on the 7th day of February, on the 28th day of March, on the 18th day of April, and on the 23d day of May, all in the year 1869, used incense for censuring persons and things in and during the celebration of the Holy Communion, or as subsidiary thereto, and permitted and sanctioned such use of incense."

The defendant in his responsive plea (Article 9) denies that he on the days in the article mentioned used incense for censuring persons and things in and during the celebration of the Holy Communion, or as subsidiary thereto, or permitted or sanctioned such use of incense as in the said article alleged. And the defendant further says that he used, and permitted, and sanctioned the use of incense on the days in the said article mentioned not for censuring persons or things nor in or during the celebration of the Holy Communion, nor as subsidiary thereto, but for other and lawful purposes.

"11th. That the said Richard Hooker Edward Wix, in the said church on the following Sundays, to wit, on the 7th day of February, on the 28th day of March, on the 18th day of April, and on the 23d day of May, all in the year 1869, used incense in and during the celebration of the Holy Communion, or as subsidiary thereto, and permitted and sanctioned such use of incense."

As to this article, the defendant in his responsive plea (Art. 11) denies that he on the days in the said 11th article mentioned used incense in and during the celebration of the Holy Communion, or as subsidiary thereto, or permitted and sanctioned such use of incense.

"13th. That the said Richard Hooker Edward Wix, in the said church, on the following Sundays, to wit, on the 7th day of February, on the 28th day of March, on the 18th day of April, and on the 23d day of May, all in the year 1869, used incense

during Divine Service, or as subsidiary thereto, and permitted and sanctioned such use of incense."

As to this article, the defendant in his responsive plea (Art. 13) denies that he used or permitted or sanctioned the use of incense on the days in the said 13th article mentioned, during Divine Service, or as subsidiary thereto, but he admits that he used incense in a proper and lawful manner on the said days.

"15th. That the said Richard Hooker Edward Wix, in the said church, on the following Sundays, to wit, on the 7th day of February, on the 28th day of March, on the 18th day of April, and on the 23d day of May, all in the year 1869, ceremonially used incense, and permitted and sanctioned such ceremonial use of incense."

As to this article, the defendant in his responsive plea (Art. 15) denies that he on the days in the said article mentioned used incense ceremonially, or permitted or sanctioned such ceremonial use of incense.

It appears from the evidence that what is called the retable is a separate and distinct piece of furniture from the holy table; that it is placed behind the holy table; and that the ledge or shelf of it, to use the words of the witness, "appears like a mantle-piece" over the holy table; that on this retable stood two large candles and twelve branch candles; and that on each side of the holy table there stood a large candlestick which rested on the ground. All these candles were lighted at the time and in the manner which I will now state. And I may remark that the counsel for Mr. Wix admitted very properly that the evidence given by the witness Cooper was substantially correct, and did not cross-examine him. It appears from his evidence that after the third collect for grace had been said, then there was a sermon; after which the remaining prayers were said, concluding with the apostolic benediction. After this the candles were lighted by a chorister; there was a procession by the minister and choir then formed, and they went from the church to the vestry. After which, another procession came from the vestry with censers and incense burning, went to the holy table, where the priest stirred up the incense, and censured all the things on the retable and holy table, while he himself was censured by a boy behind him. After which the censers and incense were carried by a boy into the vestry, accompanied, it should seem, by one of the priests, another priest remaining at the holy table. After the Communion service was over the censers were again fetched from the vestry; another procession was formed and the lights were extinguished. There were no lighted candles on the holy table itself; there was no incense burning during the time of the

celebration of the Eucharist. Between the close of the morning prayers and the beginning of the Communion service some of the congregation left the church and other persons came in, and a bell was rung to denote that the Communion service had begun. These four facts which are proved in the case are much relied upon by the counsel for Mr. Wix as materially differing the present case from that of *Martin v. Mackonochie*; <sup>1</sup> so much so as to make this present case one *primæ impressionis*.

It has been forcibly contended that the two judgments of *Martin v. Mackonochie* and *Westerton v. Liddell* are irreconcilable in principle, and that I ought to follow the doctrine laid down in the former, and not in the latter case. If indeed, the duty were cast on me of demonstrating that the two decisions were in every respect harmonious as to the principle on which they proceeded, I might perhaps, though I do not say that I should, find the task a difficult one to execute, more especially with respect to the weight apparently given to the Injunctions of Edw. VI. in *Westerton v. Liddell*, and their entire rejection in *Martin v. Mackonochie*, when they were relied upon for the purpose of showing that the burning of two candles to represent the true light of the world was illegal. But I am happy to think that no such duty is imposed upon me in the present case. The lights which were burnt in this case were not upon the holy table or "high altar," and therefore are unaffected by the Injunctions; and the lighting and the burning of them in the manner and the circumstances proved appears to me to fall under the category of ceremonies. Nor are they, in the language of the Privy Council in *Martin v. Mackonochie* (2 P. C. App. p. 387), "inert and unused," but things actively employed as a part of a ceremony, and are therefore illegal according to my own decision in the same case. It is not necessary that I should pass any opinion upon the legality of these things, if they were decorations, and neither "ornamenta" nor ceremonies. It will be remembered that the candles were lit and burning during the whole of the Communion service.

Now with respect to the use of incense, the principal defence is that it was employed during an interval between two services, and neither belonged to nor was subsidiary to either. I cannot take this view of the state of facts which is proved by the evidence. I think the fair result of that evidence is that incense was used in the interval between two services which would otherwise have immediately succeeded each other; almost the same congregation was present at both services and in the interval between them. It is true that after the

<sup>1</sup> *Vide supra*.

incense had been removed a bell was rung to signify that the second service was about to begin; but looking at all the circumstances I think it would be unreasonable and unjudicial not to conclude that the burning of the incense was intended to be subsidiary and preparatory to the celebration of the Holy Communion. I am bound therefore to pronounce that the use of the incense as well as the lighting and burning of the candles, according to the facts admitted to be proved in this case, were illegal acts, and that Mr. Wix ought to have obeyed altogether, as he did partially, the monitions of his Ordinary, which are set forth in the articles, and I must admonish him to abstain from such practices for the future, and I must condemn him in the costs of this suit.

THE OFFICE OF THE JUDGE PROMOTED BY  
ELPHINSTONE v. PURCHAS.

- (1.) *It is lawful to wear the vestments prescribed by the Rubrics of the First Prayer-Book of Edward VI. at the times therein prescribed for them.*
- (2.) *It is not lawful to wear other vestments or those vestments at other times.*
- (3.) *It is lawful to carry a biretta in the hand in Church.*
- (4.) *It is lawful to use wine mixed with water in the administration of the Holy Communion.*
- (5.) *It is lawful to use wafer-bread in the administration of the Holy Communion.*
- (6.) *It is lawful to stand before the Holy Table facing Eastward during the Prayer of Consecration.*
- (7.) *It is not lawful to stand before the Holy Table facing Eastward during the reading of the Collects next before the Epistle, the Epistle or the Collects following the Creed.*
- (8.) *It is lawful to have vases of flowers upon the Holy Table.*
- (9.) *It is not lawful to leave the Holy Table bare during Divine Service.*
- (10.) *Certain processions and additional ceremonies, and the giving of certain notices, declared unlawful.*

THE defendant in this case did not appear.

I gave judgment in it on the 3d of February 1870, at the same time as I gave judgment in the previous case of *Sumner v. Wix*.

There was no appeal on points (2), (7), (8), (9), and (10). On point (3) the Privy Council affirmed, and on points (1), (4), (5), and (6) they reversed, my decision.



During the progress of the appeal the promoter, Mr. Elphinstone, died. A Mr. Hebbert then applied, and was allowed, to appear as promoter in Mr. Elphinstone's stead ; the decision, therefore, of the Privy Council was given in the cause *nomine Hebbert v. Purchas*. After this decision Mr. Purchas applied to be allowed to appear, and to have the cause re-argued. This was not allowed.

The case is reported in the Law Reports, in the Arches Court, 3 Admiralty and Ecclesiastical, p. 66, in the Privy Council, 3 P. C. App. pp. 245, 605, 664.

JUDGMENT.—This case comes before me by letters of request from the Bishop of Chichester. The decree by letters of request was served on Mr. Purchas on the 9th of October, and the case was heard during last term. Mr. Purchas has not appeared to the citation, and the proceedings have therefore been carried on *in pœnam*. I deferred my judgment, in order to consider the various authorities that were cited and the arguments adduced by counsel,—a burden which pressed the more heavily upon the Court, inasmuch as the case was heard *ex parte*,—and also because some of the same points were raised in a proceeding against Mr. Wix, which was argued before the Court at the beginning of this term, and in which I have just given judgment.<sup>1</sup>

Mr. Purchas is perpetual curate of the perpetual curacy of St. James's Chapel, in the parish of Brighton. The benefice is created by an Act of Parliament, 7 Geo. iv. c. 3, which enacts that the repairs shall be executed by a particular person, and that the bread and wine for the Holy Communion shall be provided by the perpetual curate, but contains no provisions as to churchwardens. The chapel and the perpetual curate are made subject to the ordinary jurisdiction of the Lord Bishop of Chichester. The incumbent of this chapel seems to have no cure of souls. The chapel itself, with a certain portion of the pews and seats, and the rents, profits, and proceeds, are by the statute vested in a person of the name of Nathaniel Kemp, his heirs and assignus (§ 9). The promoter of the office of the Judge in this case is described as a colonel in Her Majesty's army, and as "of Brighton;" but I do not remember that it appeared that he is a member of the congregation of the chapel, or in any way connected with it.

The suit, like the preceding one against Mr. Wix, is in form

<sup>1</sup> *Vide supra, Sumner v. Wix.*

criminal; and the articles are forty-four in number; they underwent some reformation; and now I think the articles of charge are contained in thirty-five of them. They accuse the defendant of various ritual acts and observances, which are said to contravene the Acts of Uniformity, the Canons, and the general law of the Church. They enter into minute details and specifications,—some of a character extremely trivial, which it is impossible not to regret should ever have occupied the time of this Court; but others are of a graver character.

With respect to the evidence given before me in proof of these articles, I think it enough to say that it has been sufficient, with occasional exceptions, which I have noticed in their proper place, substantially to support them.

The most serious matter is that which relates to the wearing of certain vestments by Mr. Purchas and by other officiating ministers with his consent during the celebration of Divine service. The articles which contain these charges are as follows:—

“XXXIV. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on several occasions (to wit, on the Feast of the Purification of the Virgin Mary, February the 2d, 1869; Ash Wednesday, February the 10th, 1869; Easter Sunday, March the 28th, 1869; and on Whit-Sunday, May the 16th, 1869), used and wore a certain vestment called a cope while performing morning prayer, or parts of the service appointed for morning prayer, and before commencing the Communion service as officiating minister. That you also, on several occasions (to wit, on Sunday, November the 1st, 1868, and on Easter Sunday, March the 28th, 1869), while present in the said church or chapel, and responsible as perpetual curate or minister thereof for the due performance of Divine service therein, sanctioned and authorised the wearing of a cope by other officiating clergymen while performing morning prayer, or parts of the service appointed for morning prayer, and before the commencement of the Communion service.

“XXXV. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on several occasions (to wit, on Sunday evening, January the 31st, 1869; February the 28th, 1869; and Saturday evening, March the 27th, 1869), used and wore a certain vestment called a cope while performing evening prayer, or parts of the service appointed for evening prayer, as officiating minister; and also on several occasions (to wit, on Sunday evening, November the 8th, 1868; January the 17th, 1869; February the 7th, 1869; March the 14th, 1869; March the 21st, 1869; and March the

28th, 1869), while present in the said church, and being responsible, as perpetual curate or minister thereof, for the due performance of Divine service therein, sanctioned and authorised the wearing of a cope by other clergymen while performing evening prayer, or parts of the service appointed for evening prayer, as officiating ministers.

“XXXVI. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on several occasions (to wit, Sunday morning, November the 1st, 1868; Sunday morning, November the 8th, 1868; Sunday morning, January the 17th, 1869; Sunday morning, January the 31st, 1869; Sunday morning, February the 7th, 1869; Sunday morning, February the 28th, 1869; Sunday morning, March the 14th, 1869; Monday morning, March the 15th, 1869; and Easter Sunday morning, March the 28th, 1869) used and wore a vestment called a chasuble while officiating in the Communion service and in the administration of the Holy Communion, and on the said days and times, while present in the said church and yourself officiating, and while responsible, as perpetual curate or minister thereof, for the due performance of Divine service therein, sanctioned and authorised the wearing of a chasuble by other clergymen while also officiating in the Communion service and in the administration of the Holy Communion in the said church or chapel.

“XXXVII. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on divers occasions (to wit, on Sundays, November the 1st, 1868; November the 8th, 1868; January the 17th, 1869; and February the 2d, 1869; and on Saturday evening, May the 15th, 1869) caused or suffered certain clergy, forming part of the clergy then officiating or taking part in the ceremonial of Divine service at morning prayer, to wear certain other vestments—to wit, albs with patches called ‘apparels,’ and also to wear tippets of a circular form on their shoulders, instead of such surplices or surplices and hoods as are accustomedly worn; and on Sunday, February the 7th, 1869, and Good Friday, 1869, you, the said Rev. John Purchas, yourself wore such tippet, as aforesaid.

“XXXVIII. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on divers occasions (to wit, on Sunday, November the 8th, 1868; on Sunday, January the 17th, 1869, and other times) at evening prayer wore a scarlet stole embroidered with crosses over your surplice, and at morning service, on Tuesday, February the 2d, 1869, wore a gold stole over a garment called an alb, and have usually within two years last past worn a stole

of some colour during Divine service in your said church or chapel. That on divers occasions (to wit, on Sunday, January the 17th, 1869, Sunday, February the 28th, 1869, and other times within two years last past) you caused or suffered certain of the clergy officiating or assisting at the Communion service, in your presence, in the said church or chapel, to wear certain other vestments (to wit, dalmatics, tunics or tunicles, and albs) instead of surplices, and you yourself also, at such times, when officiating in the Communion services, have worn a certain vestment (to wit, an alb) instead of a surplice, and you yourself also then wore, and caused or suffered to be worn by other officiating clergy, a girdle, amice, and maniple; and you also on divers occasions (to wit, on Sunday, February the 28th, 1869, and on divers other days within two years last past) wore, and caused or suffered certain of the other clergy officiating or assisting at the Communion service to wear, a stole crosswise, that is to say, crossed over the breast, and you also wore or bore in your hand, and also caused or suffered to be worn or borne in the hand in your presence by other officiating clergy in the said church or chapel on divers occasions (to wit, on Sunday, February the 28th, 1869, and on Easter Sunday, 1869; and Whit-Sunday, May the 16th, 1869, and other times within two years last past) a certain cap or covering for the head called a biretta.

“XXXIX. That the said vestments in this last and in the four next preceding articles mentioned were worn, on the several occasions therein mentioned, as a matter of ceremony by the said clergy whilst so officiating, and were, as a matter of ceremony, of divers colours, and some of them (to wit, the said copes, chasubles, and stoles) of gaudy and variegated colours, the particular hue and pattern of the same being varied, as a matter of ceremony, according to the days and times on which the same were so worn.”

The Rubric (for I shall use this expression for the sake of clearness), which it is admitted contains the law as to the vestments of the bishop, priest, and deacon, is as follows:—

“And here is to be noted that such ornaments of the church, and of the ministers thereof at all times of their ministration, shall be retained and be in use as were in this Church of England by authority of Parliament, in the second year of the reign of King Edward the Sixth.”

As to the construction of this Rubric, according to the general principles of legal interpretation, I must say that, after a repeated and attentive perusal of the language, it does *per se* appear to me as plain and simple as any which is to be found in any statutory enactment. Lord Coke says that

“loquendum est ut vulgus” is to be assumed as the principle which underlies the language of enactments; and I really do not believe that any person of plain common sense and ordinary intelligence who reads this language, uninfluenced by considerations arising from supposed consequences, would hesitate as to the interpretation of it. He would say, with the Privy Council, in *Westerton v. Liddell*, it “obviously” meant that the same ornaments which were used under the first Prayer-Book of Edward VI. “may still be used.” He would perfectly understand why the Puritan party objected to this Rubric, “Forasmuch as this Rubric seemeth to bring back the cope, albe, etc., and other vestments forbidden by the Common Prayer-Book, 5 & 6 Edw. 6th, and so our reasons alleged against ceremonies under our eighteenth general exception, we desire it may be wholly left out;” and why the House of Lords should at the same time suggest as a consideration, “whether the Rubric should not be mended, where all vestments in time of Divine service are now commanded, which were used 2 Edward VI.”—(*Cardwell's Conferences*, pp. 274, 314.)

And I am convinced that, if the subject to which the language refers were not one which excites some of the strongest passions and feelings of our nature, but was one of an ordinary indifferent and civil character, no dispute would ever have been raised with respect to the plain and natural meaning of that language. Much ingenuity has been exerted to show that the obvious meaning is not the true one, and, in fact, that not only the structure of the sentence must be altered, but other words must be introduced into it before it can receive a legitimate construction. Accordingly it has been argued before me that the Rubric in question ought to be read as if the words were as follows:—“That all ornaments which were in use at the time when Charles II.'s Act of Uniformity was passed were henceforth to be retained and used, if they were likewise contained in the First Book of Edward VI.” It is not too much to say that, before such interpretation can be legally adopted, the departure from the “obvious” meaning of the language employed must be demonstrated to be required by the nature of the subject to which it is applied; and I am thus brought to another consideration, namely, as to the difficulty which is, so to speak, imported from without, or, in other words, the supposed consequences which would flow from the obvious rendering of the language. The consequences which would follow upon the use of the particular vestments specified in the First Prayer-Book of Edward VI. would, it is alleged, be the restoration of Roman ceremonies in the Church of England, abhorrent

to the principles on which her reformation was conducted. In the judgment in *Martin v. Mackonochie*,<sup>1</sup> I stated at considerable length, citing a great number of authorities in support of the position, what I conceived to be the true legal *status* of the Church of England with respect to her doctrines and her ceremonies; namely, that as to both, she had regard to the undivided Church and to primitive and Catholic doctrine and usage, rejecting those novelties and additions which the Curia of Rome had from time to time imposed upon its subjects. To all that I said upon this matter in the case of *Martin v. Mackonochie* I steadily adhere. I do not find that any contrary position was laid down by their Lordships of the Judicial Committee of the Privy Council, and it is a satisfaction to me to be able to add to this list of authorities before cited by me, that of the present Bishop of Ely, who, in his recent charge, places the position of our Church upon a similar foundation.

That very learned prelate says:—

“The Reformation here, at least, was intended to be, and in the main became, not a lawless throwing off of lawful authority, not a wanton division from the body of the Church of Christ, but rather a firm and reverent maintenance of the right of each national Church to minister its own laws and discipline, and to regulate its own faith and worship, specially when other Churches refused reformation, and an external force strove to suppress and smother the cry for it wherever it was raised. We denied, and we still deny, that this was schism; we did not separate from the Churches of France or Spain, or Germany or Italy.”—(*Change*, p. 59.)

And again,—

“I have tried to turn your thoughts to the earliest ages of the Christian faith; you well know that the professed principle of the English Reformation was a recalling of faith and a readjusting of ceremonial to the pattern, as far as possible, of the primitive Church.”—(*Ibid.* p. 90.)

It is a mistake in law, as well as in history, to conceive that the position of the Church of England with respect to the Roman Church can be ascertained by citations of the violent vituperations to be found during the heat of religious conflict in the writings of some extreme reformers,—many of whom upon examination will be found to be just as hostile to the present doctrines and ceremonies of England as they were at that time to those of Rome. And this remark is especially applicable to foreign reformers, whose Churches were constructed on a different basis from that of the Church of

<sup>1</sup> *Vide supra.*

England, though perhaps it is not impertinent to observe that the gorgeousness of the vestments and the ritual, which the Scandinavian reformers were not afraid to leave to their Church, far exceeds any that was contemplated by the first Prayer-Book of Edward VI.

The principal vestments complained of in this case afford a strong illustration of the truth of my general remark: they are mentioned in the first Prayer-Book as a "vestment" and a "cope." And when it was argued that the cope could not be legally worn by Mr. Purchas, because it was symbolical of Roman error and corruption, it was admitted that it was specially retained by the existing law as proper, if not absolutely necessary, to be worn in Cathedral and Collegiate Churches. The surplice itself, which it is now contended ought to be worn instead of these vestments, was, and I believe is now, considered by the Presbyterians as one of the worst rags of Popery which the Church of England has retained.

And here, perhaps, it is not irrelevant to advert to the language of Hume in describing the state of parties in England on the eve of the great Rebellion:—

"But the grievances which tended chiefly to inflame the Parliament and nation, especially the latter, were the surplice, the rails placed about the altar, the bows exacted on approaching it, the Liturgy, the breach of the Sabbath, embroidered copes, lawn sleeves, the use of the ring in marriage, and of the cross in baptism. On account of these," he adds (I am not now concerned with the justice of his censure), "were the popular leaders content to throw the Government into such violent convulsions; and, to the disgrace of that age and of this island, it must be acknowledged that the disorders in Scotland entirely, and those in England mostly, proceeded from so mean and contemptible an origin."—(*Hume's History of England*, vol. vi. ch. 54, p. 388.)

I dismiss the argument of consequences from my consideration, and proceed to apply the usual canons of interpretation to the Rubric before me.

The Rubrics in regard of vestments in the first Prayer-Book of Edward VI., to which I am referred by the present Rubric, were as follows:—

(1.) At the beginning of the Communion service:—

"The Priest that shall execute the holy ministry shall put upon him the vesture appointed for that ministration, that is to say, a *white albe, plain, with a vestment or cope*. And where there be many Priests or Deacons, there so many shall be ready to help the Priest in the ministration as shall be requisite, and

shall have upon them likewise the *vestures appointed* for their ministry, that is to say, albes, with tunicles."

(2.) At the end of the Communion service :—

"And though there be none to communicate with the Priest, yet these days (after the Liturgy ended) the Priest shall put upon him a plain albe or surplice, with a cope, and say all things at the altar (appointed to be said at the celebration of the Lord's Supper) until after the offertory."

(3.) At the end of the Book of Common Prayer, after the exposition "of Ceremonies :"—

"In the saying or singing of matins and evensong, baptising, and burying, the minister, in parish churches and chapels annexed to the same, *shall use a surplice* ; and in all cathedral churches and colleges, the archdeacons, deans, provosts, masters, prebendaries, and fellows, being graduates, *may use* in the choir, besides their surplices, such hoods as pertaineth to their several degrees which they have taken in any university within this realm ; but in all other places every minister shall be at liberty to use any surplice or no. It is also seemly that graduates when they do preach should use such hoods as pertaineth to their several degrees. And whensoever the bishop shall celebrate the Holy Communion in the church, or execute any other public ministration, he shall have upon him, beside his rochette, a surplice or albe, and a cope or vestment ; and also his pastoral staff in his hand, or else borne or holden by his chaplain."

These Rubrics were abolished by the second Prayer-Book of Edward VI., which substituted the following :—

"The minister at the time of the Communion, and at all other times in his ministration, shall use neither albe, vestment, nor cope ; but being archbishop or bishop he shall have and wear a rochet, and being a priest or deacon shall have and wear a surplice only."

All these Rubrics, and the services to which they belong, were repealed in the reign of Queen Mary (1 Mar. Sess. 2, cap. 2).

By the next Act of Uniformity (1 Eliz. c. 2, s. 25) it was enacted—

"That such ornaments of the Church, and of the ministers thereof, shall *be retained* and be in use as was in this Church of England by authority of Parliament in the second year of King Edward VI., until other order shall be therein taken by the authority of the Queen's Majesty, with the advice of Her Commissioners appointed and authorised under the Great Seal of England for causes ecclesiastical, or of the Metropolitan of this realm."



Annexed to this statute by s. 2, was the Queen's Prayer-Book, the Rubric to which was as follows:—

“And here it is to be noted that the minister, at the time of the Communion, and at all other times in his ministration, shall use such ornaments in the Church as were in use by authority of Parliament in the second year of the reign of King Edward VI., according to the Act of Parliament set in the beginning of this book.”

It will be observed that the words “retained and” which do occur in the Act, were omitted in this Rubric; and they do not appear in the Rubric of the Prayer-Book of King James, which is identical with that of Elizabeth.

It is admitted that on the passing of this statute the vestments prescribed by the first Prayer-Book came into legal use; but it has been contended that Queen Elizabeth exercised the power given her by the statute, and “took other order.”

If any such further order were taken in compliance with the statute, it must be in one of four ways:—

(1) Either by the Injunctions of 1559, or (2) the Advertisements of 1564-5, or (3) the Canons of 1603-4, or (4) the Canons of 1640. Of these four the Advertisements were principally relied upon as the execution of the further order, though the Canons of 1603-4 were also prayed in aid. Before, however, I consider these two modes of execution, I will say a word as to the Injunctions and the Canons of 1640. The Injunctions, which I think must upon the whole be considered as having been issued by the Royal authority alone, and as not having statutory authority, do not contain any express order with regard to the vestments; but the archbishop and certain bishops afterwards drew up “Interpretations and further Considerations of these Injunctions for the better direction of the Clergy;” among which is to be found the following:—

“Concerning the Book of Service.”

“First. That there be used only but one apparel; as the cope in the ministration of the Lord's Supper, and the surplice in all other ministrations.”—(1 *Cardwell, Doc. Annals*, p. 238.)

With respect to the Canons of 1640, they contain no provision as to the subject of vestments. I come, therefore, to a consideration of the Advertisements. Those which refer to the present question are as follows:—

“Item. In the ministration of Holy Communion in the cathedrall and collegiate churches, the principal minister shall use a cope, with gospeller and epistoler agreeably; and at all others prayers to be sayde at the Communion Table, to use no copes but surpleses.”

“Item. That the deane and prebendaries weare a surplesse

with a silke hoode in the quyer; and when they preache in the cathedrall or collegiate church to weare their hoode."

"Item. That every minister sayinge any publique prayers, or ministringe the Sacramentes, or other rites of the church, shall weare a comely surples, with sleeves, to bee provided at the charges of the parishe."—(1 *Cardwell, Doc. Annals*, p. 326.)

The authority usually referred to with respect to these Advertisements is *Strype's Life of Parker* (vol. i. chap. 20). Cardwell, in his *Documentary Annals*, and Hallam, in his *Constitutional History* (vol. i. p. 179, 6th edition), and Collier, in his *Ecclesiastical History*, dealing with this question of the Advertisements, refer, as to their principal authority, to Strype, in the *Annals* (vol. i. p. 419, folio), and in his *Life of Parker*. And, though by no means always an accurate transcriber, his notes appear to be the fountain from which the history of this matter has been principally derived. Burnet, for instance, relies exclusively upon this authority (*Hist. Ref.* ed. Oxford, 1829, vol. iii. p. 588). The history of these Advertisements seems to reflect the doubtful state of all Church authority at the time when they were issued. The Puritan party were freely condemning and disregarding the rites and ceremonies of the restored Church, and by the influence of their patron, the Earl of Leicester, in the Privy Council, were continually thwarting the various orders put forth by the Queen and by the prelates for the purpose of enforcing the uniformity of a decent ritual. The Queen, exasperated by the conduct of the Puritans in 1564, ordered the Archbishop, with the aid of certain other Bishops, members of the Ecclesiastical Commission, to draw up certain *Articles* or *Ordinances*, the object of which was to secure as great an amount of decent ritual as the circumstances of the time would permit. Archbishop Parker and some of the Bishops drew up the articles required; but, says Strype, "because the book wanted the Queen's authority, they thought fit not to term the contents thereof *Articles* or *Ordinances*, by which names they at first went, but by a modest denomination, viz., *Advertisements*." The Queen, it is probable from conflicting motives, partly from the influence of Leicester, and partly from an apprehension of weakening the Rubric, which referred to the second year of Edward VI., refused her official sanction to these Advertisements, and, as I think Dr. Cardwell correctly states,—

"Left them to be enforced by the several bishops on the canonical obedience imposed upon the clergy, and the powers conveyed to the Ordinaries by the Act of Uniformity. Their title and preface certainly do not claim for them the highest degree of authority; and, although Strype infers from certain

evidence which he mentions (*Parker*, vol. i. p. 319) that they afterwards received the royal sanction, and recovered their original title of Articles and Ordinances, it seems more probable that they owed their force to the indefinite nature of episcopal jurisdiction, supported, as in this instance was known to be the case, by the personal approval of the sovereign."—(*Cardwell's Doc. Ann.*, vol. i. p. 322.)

Collier observes that—

"The 'Advertisements' were checked at present by the interposing of the Earl of Leicester, of Knolles, and some other court patrons of the Dissenters; however, afterwards they recovered their first title of Ordinances, and were given in charge at a metropolitical visitation in the year 1576."—(*Collier's Eccles. Hist. of Great Britain*, ed. 1840, vol. vi. p. 402.)

"A loud outcry," says Mr. Lathbury (*History of Book of Common Prayer*, p. 72, note 9), "was raised by the Puritans against the Advertisements, as though some new rites had been imposed, whereas they were only intended to enforce such as were already in use, because some of the clergy were lax in their practice. They were allowed by the Queen to be published, but not under Her Majesty's authority; consequently, they never possessed the same force as the Injunctions. As, however, they are quoted in the 24th Canon, they are still of some importance. Long after, in this reign, we find the Puritans objecting to the cope as in general use. 'Doe not the people think a more grievous fault is committed if the minister doe celebrate, etc., without a surplesse or a cope, than if the same through his silence should suffer an hundred souls to perish' (*Parte of Register*, 45). The cope is mentioned frequently in the same work (62, 84)." I cannot find that Archbishop Parker, anxious as he was to enforce these Advertisements, ever said or wrote that they were issued under the authority of the statutes.

I think the fair result of the history derived from printed books on the subject is, that the Queen never gave her official or legal sanction to these "Advertisements," but allowed them to be issued by the prelates, with the assurance that they had her personal sanction; and I may add that, to the best of my belief, no legal treatise of authority, and no judgment of a court of justice, has ever yet pronounced that these "Advertisements" were issued under the conditions which the statute of Elizabeth required.

It is said, however, that though it has been hitherto supposed that these Advertisements were issued without the observance of the conditions prescribed in the statute, and, therefore, illegally, that recent discoveries in the State Paper Office have

brought to light documents which establish that these conditions were complied with, and that the Advertisements had therefore statutable authority. I am unable to draw so large an inference from the manuscript document, copied from the State Paper Office, which has been submitted to me. It does not seem to me to do more than contain a recital in an informal document, "that the Advertisements were sett out by Her Majesties authoritee," which would not carry the matter further, I think, than the reference to them in the 24th Canon, "according to the Advertisements published Anno 7 Eliz.," or, as the Latin version has it, "juxta admonitiones in septimo Elizabethæ promulgatas." It is impossible to conceive that the authority which published these Canons was not perfectly aware both of the fact and law relating to these Advertisements, and the manner in which they are referred to would rather lead to the inference that they were not at that time considered to have *per se* a statutable authority. But this point does not appear to me to be of much importance, so far as the present case is concerned, for two reasons:—First, there are no prohibitory words, such as were contained in the Rubric to the second Prayer-Book of Edward VI., with regard to the ornaments of ministers—and this omission is worthy of notice—for the gloss, which all ecclesiastical history, contemporaneous and subsequent, would give to the Advertisements is, that they provided that the ornaments of the minister should not fall below a certain point; not that it should not exceed that point. The object of the Advertisements was to give notice that the minimum of ornament mentioned in them would be enforced by authority, just as, with regard to the vestment of the Holy Table, the 82d Canon prescribed that it should be "covered with a carpet of silk or other decent stuff," and Dr. Lushington held that this excluded other vestments of the altar—but their Lordships observed in *Westerton v. Liddell*:—

"Next as to the embroidered cloths, it is said that the Canon orders a covering of silk, or of some other proper material, but that it does not mention, and, therefore, by implication excludes, more than one covering. Their Lordships are unable to adopt this construction. An order that a table shall always be covered with a cloth surely does not imply that it shall always be covered with the same cloth, or with a cloth of the same colour or texture. The object of the Canon seems to be to secure a cloth of a sufficiently handsome description, not to guard against too much splendour."—(*Moore*, p. 188.)

This view that, where it was intended to prohibit as well as to prescribe, express words of prohibition were used, is further confirmed by the language of the Advertisements themselves;

for instance, the Advertisement which relates to prayers to be said in cathedrals at the Holy Table, when there is no celebration of the Eucharist:—

“Item. In the ministration of Holy Communion in the cathedrall and collegiate churches, the principall minister shall use a cope with gospeller and epistoler agreeably, and at all other prayers to be sayde at the Communion Table to use no copes but surplices.”—(1 *Cardwell, Documentary Annals*, p. 326.)

It was more faintly argued that, even if the Advertisements did not execute the power given by statute, the Canons of 1603-4 had this effect. Upon this argument it is to be observed, in the first place, that they contain no prohibitory words; and it is upon this very ground that one of them, as I have already said, which gave directions as to the covering of the Holy Table, was held by the Privy Council not to be exhaustive, or to exclude the use of other coverings. In the second place, it is, to say the very least, questionable whether the words “by the authority of the Queen’s Majesty,” with the approval of the particular persons mentioned therein, could confer any power upon the succeeding monarch. And, thirdly, the Canons of 1603-4 were made in Convocation with the consent of the Crown and under the Statute of Henry VIII. (25 Hen. VIII. c. 19), and were the creatures of the distinct ecclesiastical legislature known to the constitution of this country; and it seems to me impossible to hold, because the Crown ratified what the Convocation did, that a Canon so enacted by Convocation under the statute of Henry VIII. could be an execution of a power under a totally different Statute: and it is moreover fatal to the argument, that the Metropolitan was not a member of this Convocation, as appears by the recital in the Crown’s writ prefixed to the Canons, the Bishop of London presiding during the vacancy of the see. Lastly, and this remark applies equally to the Advertisements, unless the words “be retained” are to have a special construction put upon them,—a subject which I will presently consider,—a subsequent statute, which expressly revived a prior statute inconsistent with the Advertisements of Queen Elizabeth, would, by necessary implication, repeal them.

I have already observed that the words “be retained” are in the statute, though not in the Prayer-Book of Elizabeth. Now, is there any reason for supposing that this variance was intentional or significant? or was the variance accidental and insignificant, because the words were treated as an amplification of the words “be in use”? I think the last is the true solution, and certainly the Privy Council in *Westerton v. Liddell*

were of this opinion; they had to construe the words "be retained" as well as the words "be in use;" they drew no distinction between the two expressions; they did not rule that the ornaments of the Church could not be legal unless they satisfied the double condition of being in use at the time when the Rubric of Charles II. became law, and also of their being prescribed by the Prayer-Book of Edward VI. On the contrary, referring to the difference of language between the Statute and the Rubric of Elizabeth, they said:—

"It will be observed that this Rubric does not adopt precisely the language of the Statute, but *expresses the same thing in other words*. The Statute says, 'such ornaments of the Church and of the ministers thereof shall be retained and be in use,' the Rubric, 'that the minister shall use such ornaments in the Church.'"—(*Moore*, p. 159.)

In truth, there would be an insuperable difficulty in satisfying the supposed condition that the ornaments must have been *de facto* in use; for what ornaments were in use at the time of the Restoration? The churches had been for many years in the possession of the Presbyterians—where they had not been driven out by the Independents; neither catholic doctrine nor ritual could be found in the churches until after St. Bartholomew's Day.

Nor is the difficulty lessened if the condition be interpreted to imply that the ornaments must be *de jure* in use; that would take us back, passing over the Protectorate of Cromwell, to the last year of Charles I.'s reign, that is, if my observations as to the Advertisements and Canons are correct, to the Elizabethan Act of Uniformity, and would give a meaning to the words "be retained" in Charles II.'s Rubric, which it is admitted they had not in Elizabeth's Act of Uniformity.

Bearing in mind the importance of the question, I have endeavoured not to shrink from any part of the arduous duty which has devolved upon me. But I am bound to say that I think this Rubric has already received a construction from an authority which is binding upon me. It has been twice considered and elaborately reviewed by the Judicial Committee of the Privy Council, first, in the case of *Westerton v. Liddell*, secondly, in the case of *Martin v. Mackonochie*, and in both instances precisely the same construction was put upon it.

In *Westerton v. Liddell* the language was as follows:—

"Their Lordships, after much consideration, are satisfied that the construction of this Rubric which they suggested at the hearing of the case is its true meaning, and that the word 'ornaments' applies, and in this Rubric is confined, to those articles the use of which in the services and ministrations of

the Church is prescribed by the Prayer-Book of Edward the Sixth."

"The term 'ornaments' in ecclesiastical law is not confined, as by modern usage, to articles of decoration or embellishment, but it is used in the larger sense of the word *ornamentum*," which, according to the interpretation of Forcellini's Dictionary, is used 'pro quocumque apparatu, seu instrumento.' All the several articles used in the performance of the services and rites of the Church are 'ornaments;' vestments, books, cloths, chalices, and patens are amongst Church ornaments; a long list of them will be found extracted from Lyndwood, in Dr. Phillimore's edition of *Burn's Ecclesiastical Law*."—(Vol. i. p. 375-7.)<sup>1</sup> In modern times organs and bells are held to fall under this denomination.

"When reference is had to the first Prayer-Book of Edward the Sixth, with this explanation of the term 'ornaments,' no difficulty will be found in discovering amongst the articles of which the use is there enjoined, ornaments of the Church, as well as ornaments of the ministers. Besides the vestments differing in the different services, the Rubric provides for the use of an English Bible, the new Prayer-Book, a poor man's box, a chalice, a corporas, a paten, a bell, and some other things."—(*Moore*, pp. 156-7.)

In *Martin v. Mackonochie*, their Lordships say:—

"The construction of this Rubric was very fully considered by this Committee in the case of *Westerton v. Liddell*, already referred to; and the propositions which their Lordships understand to have been established by the judgment in that case may thus be stated:—

"First, the words 'authority of Parliament' in the Rubric refer to and mean the Act of Parliament 2 and 3 Edward VI. c. 1, giving Parliamentary effect to the first Prayer-Book of Edward VI., and do not refer to or mean canons or royal injunctions, having the authority of Parliament, made at an earlier period.

"Second, the term 'ornaments' in the Rubric means those articles, the use of which, in the services and ministrations of the Church, is prescribed by that Prayer-Book.

"Third, the term 'ornaments' is confined to these articles.

"Fourth, though there may be articles not expressly mentioned in the Rubric, the use of which would not be restrained, they must be articles which are consistent with, and subsidiary to, the services; as an organ for the singing, a credence table from which to take the sacramental bread and wine, cushions hassocks, etc.

<sup>1</sup> See *Phillim. Eccl. Law*, p. 929.

"In these conclusions, and in this construction of the Rubric, their Lordships entirely concur."—(*Martin v. Mackonochie*, 2 P. C. App. 390.)

It certainly would seem at first sight that these judgments have made my course plain. I have, in obedience to them, but to inquire whether these "ornaments of the minister" are to be found in the first Prayer-Book of Edward VI.; if they are, to pronounce them legal,—if not, illegal.

Two objections are raised to the application of the plain and clear language of these judgments to the present case; first, it is said that the question of the ornaments of the minister was not directly before the Court in *Westerton v. Liddell*, but only the ornaments of the church; and this is literally true; but how little can it avail to prevent the application of the same rule to both kinds of ornament? The reasoning covers equally both kinds of ornament. The common rules of grammar and sense require that I should not divide a sentence and apply a predicate, equally applicable to both subjects contained in it, to one only. I am not at liberty, if I were so inclined, to question the judgment as to the ornaments of the church, nor would it become me to express any doubt as to the logic on which it is built. I am bound to follow where that judgment leads me; and if so, I must, on the like premises, arrive at the like conclusion.

Secondly, it is objected that the words "shall be retained" modify the application of the judgment in *Westerton v. Liddell* to the case before me.

But in what way do these words produce this effect? Because they are equally applicable to both classes of ornaments, and must have been fully considered by the Privy Council in both the judgments, and in neither was any attempt made to lay a particular stress upon them, much less to attach to them the important consequences with which it is now sought to make them pregnant.

I must not omit to notice the argument drawn from the Visitation Articles since the statute of Charles II., and the alleged *contemporanea expositio* afforded by them, and by the fact of the non-usage of the vestments in question. First, as to the Visitation Articles, the same principle applies to them as to the Advertisements and Canons, and, indeed, as to every attempt to procure a decent ritual since Queen Elizabeth's time; namely, that the authorities were content to order the minimum of what was requisite for this purpose, having, for the reasons which I have explained in my former judgment in *Martin v. Mackonochie* (pp. 174-190),<sup>1</sup> great difficulty in

<sup>1</sup> *Vide supra*, pp. 55-68.



obtaining even that minimum. And so with regard to the argument as to the legality of a church-rate for objects of ritual, I have nothing to add to the observations which I made in that case as to the insufficiency of this argument (p. 201).<sup>1</sup> Nor is it necessary to repeat what was said in that case, and the preceding case of *Westerton v. Liddell* (Moore, p. 172), that no amount of desuetude can repeal the obligations of a statute, much less render its provisions unlawful. But it has been urged that the admitted disuse, till within a very recent period, of these ornaments since the Restoration, affords a *contemporanea expositio* which removes all doubt as to the meaning of the Rubric. In the first place, this argument implies that the words of the Rubric are such as to raise a doubt, whereas, in themselves, the words are perfectly plain and clear. In the second place, the disuse is practically accounted for by the circumstances to which I have just adverted in dealing with the argument from the Visitation Articles. In truth, however, the argument is bad from the vice of proving a great deal too much; the same argument would make the copes in the cathedrals unlawful, which it is admitted they are not; the use of the surplice in preaching unlawful, which is the proper dress; and *è converso* would establish the legality of the use of the black gown, which has no warrant of law; and would render unlawful the credence table, and this last ornament affords a special illustration of the inapplicability of this argument. At the time of the decision in *Westerton v. Liddell*, the credence table had been almost universally disused; I believe there were not half a dozen exceptions throughout England; and this disuse had led to a continued and universal violation of the Rubric, in placing the elements upon the Holy Table before the commencement of the service, which, as their Lordships observed, was "certainly not according to the order prescribed." Their Lordships, therefore, disregarded this usage, and sanctioned the credence table, because it enabled the provisions of the Rubric to be executed. And so the doctrine of the *contemporanea expositio* was strongly urged against the lawfulness of the cross either as an ornament or as a decoration; the disuse of it in the Church of England was clearly established, but their Lordships thought that the circumstances of the time fully accounted for this, and in spite of their proved disuse in the churches of this country, said, "That crosses, as distinguished from crucifixes, have been in use, as ornaments of churches, from the earliest periods of Christianity; that when used as mere emblems of the Christian faith, and not as objects of super-

<sup>1</sup> *Supra*, p. 78.

stitious reverence, they may still lawfully be erected as architectural decorations of churches.”—(Moore, p. 175.)

Nor upon this head is it to be omitted that, though the effect of this Rubric in bringing back the vestments of Edward VI. had been pointed out by the Puritans in Charles I.’s time, as I have stated, no denial of this consequence was ever given by the authorities on behalf of the Church; and that, subsequently to the date of this Rubric, no judicial authority, no legal commentator, has questioned the effect of this Rubric in legalising the vestments of the second year of Edward VI.

Burn, in the third volume of his *Ecclesiastical Law*, after reciting the Rubric in the present Prayer-Book, proceeds as follows:—

“Therefore it is necessary to recur in this matter to the Common Prayer-Book established by Act of Parliament in the second year of King Edward VI., in which there is this Rubric:—‘In the saying or singing of *matens* and *evensonge*, *baptyzng* and *buryng*, the minister in paryshe churches, and chapels annexed to the same, shall use a *surples*. And in all cathedrall churches and colledges the archdeacons, deanes, provestes, maisters, prebendaryes, and fellowes, beinge graduates, may use in the quiere, beside theyr surplesses, such hoodes as pertaineth to their severall degrees whiche they have taken in any universitie within this realme. But in all other places every minister shall be at libertie to use any surples or no. It is also seemly that graduates, when they dooe preache, should use suche hoodes as pertayneth to theyr severall degrees.’

“So that in marrying, churching of women, and other offices not here specified, and even in the administration of the Holy Communion, it seemeth that a surplice is not necessary. And the reason why it is not enjoined for the Holy Communion in particular is because other vestments are appointed for that ministration, which are as followeth:—‘Upon the day, and at the time appointed for the ministracion of the Holy Communion, the priest that shall execute the holye ministry shall put upon hym the vesture appointed for that ministracion, that is to say, a white *albe* plain, with a vestment or *cope*. And where there be many priestes or deacons, there so many shall be ready to helpe the priest in the ministracion as shall be requisite, and shall have upon them likewise the vestures appointed for their ministry, that is to say, *albes*, with *tunacles*.’

“NOTE.—The albe differs from the surplice in being close-sleeved.

“‘And whensoever the byshop shall celebrate the Holy Communion in the churche, or execute any other publique ministracion, he shall have upon him, besyde his rochette, a

surples or albe, and a cope or vestment, and also hys pastoral staffe in his hand, or elles horne or holden by hys chaplyne.'"  
—(P. 437.)

Mr. Stephens, in his elaborate edition of the Book of Common Prayer, published for the Ecclesiastical History Society, after citing the foregoing Rubrics, says:—

"All the Rubrics just quoted were omitted in 1552, and never appeared again. The only Rubric respecting ornaments in the second Common Prayer-Book of Edward VI., confirmed likewise by Act of Parliament, was directed against the use of the cope and pastoral staff. These ornaments, however, were again introduced by the Rubric of 1559, which brought us back, not to the second book of Edward VI., but to the first. And this Rubric of 1559, slightly altered, was a second time authorised at the last review.

"Copes were worn at Durham and Westminster till the middle of the last century, and copes are worn now by the bishops at the coronations; indeed, all the directions contained in the first book of Edward VI., as to the ornaments of the church and of the ministers thereof at all times of their ministration, are by stat. 14 Car. II. c. 4, the statute law of the Anglican Church."—(Vol. i. p. 367.)

In October 1864 a Commission under the Clergy Discipline Act was issued by the late Bishop of Exeter, to inquire into certain charges against the curate of Helston, the principal one being the use of the surplice in preaching. The Bishop, in his judgment upon this point, after stating the several statutes and Rubrics, says:—

"From this statement it will be seen that the surplice may be objected to with reason; but then it must be because the law requires 'a white albe plain, with a vestment or cope.' Why have these been disused? Because the parishioners—that is the churchwardens, who represent the parishioners—have neglected their duty to provide them; for such is the duty of the parishioners by the plain and express canon law of England.—(*Gibson*, 200.) True, it would be a very costly duty, and for that reason, most probably, churchwardens have neglected it, and archdeacons have connived at the neglect. I have no wish that it should be otherwise. But, be this as it may, if the churchwardens of Helston shall perform this duty, at the charge of the parish, providing an albe, a vestment, and a cope, as they might in strictness be required to do (*Gibson*, 201), I shall enjoin the minister, be he who he may, to use them. But until these ornaments are provided by the parishioners, it is the duty of the minister to use the garment actually provided by them for him, which is the surplice."

This judgment will be found reported in Mr. Stephen's *Book of Common Prayer* (vol. i. p. 378), and in his *Ecclesiastical Statutes* (vol. ii. p. 2046).

I do not know how I can better close my observations upon this subject than by reciting the language of the Privy Council in *Westerton v. Liddell* (Moore, p. 159):—

“The Rubric to the Prayer-Book of January 1st, 1604, adopts the language of the Rubric of Elizabeth. The Rubric to the present Prayer-Book adopts the language of the statute of Elizabeth; but they all obviously mean the same thing, that the same *dresses* and the same utensils or articles which were used under the first Prayer-Book of Edward VI. may still be used.”

I am of opinion that the plain words of the statute, according to the ordinary principles of interpretation, and the construction which they have received in the two judgments of the Privy Council, oblige me to pronounce that the ornaments of the minister, mentioned in the first Prayer-Book of Edward VI., are those to which the present Rubric referred; and I cannot, therefore, pass any ecclesiastical sentence against Mr. Purchas for wearing them.

The next question is, What are these ornaments?

They are for ministers below the order of bishops, and when officiating at the Communion service, cope, vestment or chasuble, surplice, alb, and tunicle; in all other services the surplice only, except that in cathedral churches and colleges the academical hood may be also worn. The other vestments worn by Mr. Purchas, and the cope, at any other time but the Communion service, are unlawful, and may not be worn. It is unlawful, therefore, for Mr. Purchas to wear or authorise to be worn, a cope at morning or at evening prayer; albs with patches called apparels, tippets of a circular form, stoles of any kind whatsoever, whether black, white, or coloured, and worn in any manner; dalmatics and maniples, which latter ornament, it appears from the evidence, was worn on one occasion by one of the officiating clergymen, though it does not appear that Mr. Purchas wore one himself. As to the girdle and the amice it is not proved that Mr. Purchas wore them, or suffered them to be worn.

With respect to the covering or cap, called a “biretta,” which Mr. Purchas was proved to have carried in his hand, and a clergyman to have worn in a procession, it appears to me as innocent an ornament as a hat or a wig, or as a velvet cap, which latter is not uncommonly worn by bishops, clergy, and laity, as a protection to the head when needed. The 74th Canon, which is still in force, and which enjoins decency of apparel to ministers when out of their houses, provides that “no ecclesias-

tical persons shall weare any coife or wrought night-caps, but onely plaine night-caps of blacke silke, sattin, or velvet." And the 18th Canon provides that "no man shall cover his head in the church or chappell in the time of Divine service, except he have some infirmity, in which case let him wear a night-cap or coife," which word "night-cap" is not to be understood as a covering worn in bed, but as a kind of close-fitting cap, as is shown by the words in the Latin Canons, "*pileolo aut rica*." And I do not pronounce this particular kind of black cap, called a biretta, so worn, to be unlawful.

With respect to the colour of the vestments, which I have pronounced to be lawful, the Rubric is silent, except in the case of the alb and surplice; and the expert in such matters, who was produced as an authority by the promoter, deposed that the vestments which were used in Mr. Purchas's church were in every respect such as were in use in the Church in the second year of Edward VI.

There are various charges relating to particular kinds of processions organised by Mr. Purchas in his church, which I will now deal with; they are to be found in the following articles:—

"IV. That you, the said Rev. John Purchas, on the several occasions in this article hereinafter mentioned, in the said church or chapel of St. James's, Brighton (to wit, on Sunday morning, November the 1st, 1868; on Christmas Eve, 1868; on Christmas Day morning, 1868; on Sunday morning, December the 27th, 1868; on Easter Eve, March the 27th, 1869; on Easter Day morning, March the 28th, 1869; and on Whitsunday morning, May 16th, 1869; on Sunday evening, January the 24th, 1869; on Sunday evening, February the 28th, 1869; on Saturday evening, May the 15th, 1869; and on Whitsunday evening, May the 16th, 1869), immediately before, but at the hour appointed for the commencement of the prayers appointed to be read at morning and evening service respectively, and *without any break or interval, and as connected with and being the beginning of and a part of the rites and ceremonies of public worship on the said several occasions*, in the presence of the congregation then assembled in the said church or chapel of St. James's, Brighton, for the purpose of hearing divine service, formed, or caused to be formed, a procession, composed of a thurifer carrying an incense-vessel containing incense, swinging the same; a crucifer bearing a crucifix, or large cross, with a figure of the Saviour thereon; two acolytes, or boys, dressed in red and white, with red skullcaps on their heads and bearing lighted candles; several deacons, or other persons, bearing one or more silk banners, with a cross or other device embroidered

on each of such banners; divers choristers, dressed in red and white; a person called a ceremoniarus, in cassock and cotta, with blue tippet; two persons, called rulers of the choir, in copes; you, the said Rev. John Purchas, and the other officiating minister of the day, in copes: that the procession so formed proceeded round the said church or chapel of St. James's, singing a certain hymn, being No. 100 of the hymns contained in a book called *Words of the Hymnal Noted*, or some other hymn from the same book; and that immediately on the return of each of such processions on each of the said several occasions to the choir, the prayers for the day were commenced; and that on a certain other occasion, to wit, on Sunday, February the 28th, 1869, immediately after the benediction at evening service, and *without any break or interval, and as connected with and forming the conclusion of and part of the rites and ceremonies of public worship*, formed, or caused to be formed, a like procession to the one immediately hereinbefore mentioned, and proceeded therewith round the said church, singing as aforesaid, in the presence of the congregation assembled."

"XIV. *That you then,*"—that is, after doing certain acts, which fall under another category, and which I will consider presently,—"*formed or caused to be formed a procession*, consisting of a thurifer with his incense-vessel containing incense, the crucifer with a large crucifix, acolytes or boys with lighted candles, the person called ceremoniarus, an assistant minister, and you, the Rev. John Purchas, in a cope, followed by several members of the congregation each with a lighted candle; that the procession so formed proceeded round the interior of the said church or chapel singing; that thereupon afterwards you, the said Rev. John Purchas, took off your cope, and, wearing a white alb with gold stole and chasuble, proceeded to the Communion Table and, after being yourself censured, commenced the Communion service, during the reading of which the congregation extinguished their candles. That after the Collect and Epistle had been read the said candles were, during the reading of the Gospel, again lighted, and were then again extinguished: each of the acts in this article hereinbefore set forth, being of the nature of and intended by you as and constituting a religious ceremony."

"XXVI. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on the Sunday next before Easter, March the 21st, 1869, at morning service, and during or immediately after the conclusion of morning prayer, and before the commencement of the Communion service, sprinkled or caused to be sprinkled with so-called holy water, and blessed or consecrated, or caused to be

blessed or consecrated, and censed, or caused to be censed, divers palm branches then lying on a table placed near to the Communion Table, and that after the said morning prayer was concluded you caused the said palm branches to be distributed to yourself and to divers other clerks in holy orders, to persons of the choir and members of the congregation then and there present in the said church or chapel; and that *you then caused to be formed a procession* in the said church or chapel, with a crucifix borne before it, and consisting of the thurifer, choristers, priests, and others, which said procession then proceeded round the interior of the said church or chapel, chaunting and elevating the said palm branches, and accompanied with lighted candles; and that on the return of the procession the Communion service was immediately commenced and proceeded with, the whole taking place in the presence of the congregation then assembled to hear Divine service as a part of Divine service, and as a ceremony connected therewith, without break or intermission."

It appears to me from the evidence that these particular processions have been so conducted as to constitute a further rite or ceremony in connection with the morning and evening service, and in addition to those prescribed by the Rubrics for those services. I must, therefore, placing them under this category, pronounce them illegal.

The following articles, which I have grouped together, contain charges against Mr. Purchas for using, during the time of, or so immediately connected with, the prescribed service as to be practically undistinguishable from it, rites or ceremonies other than and additional to those prescribed in the Book of Common Prayer:—

"V. That on a certain occasion (to wit, on Sunday morning, November the 1st, 1868), you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, caused a group of acolytes, or attendants, to stand or kneel round you, and a person called the crucifer to stand by the side of you, bearing a crucifix or gilt cross, with the figure of the Saviour thereon, as a matter of ceremony, during the reading by you, the said Rev. John Purchas, of the Gospel in the Communion service; that on certain other occasions (to wit, on Easter Eve, 1869; Saturday evening, May the 15th, 1869; and on Whit-Sunday evening, May the 16th, 1869), the 'Te Deum' being on each of such occasions sung as a part of evening service immediately after the evening prayers, in the said church or chapel of St. James's, Brighton, aforesaid, the congregation remaining in the said church or chapel during the singing thereof, you, the said Rev. John Purchas, during the singing

thereof, caused the said crucifer, with his said crucifix, and the bearers of banners, to stand holding the same as a matter of ceremony near to you, the said Rev. John Purchas, and in front of the Holy Table."

"XIII. That you, the said Rev. John Purchas, did in the said church or chapel of St. James's, Brighton, aforesaid, on Ash Wednesday, February the 10th, 1869, at morning service, immediately after the conclusion of the Commination, and before commencing the Communion service (you being then the officiating minister), proceed, as a matter of ceremony in connection with the Divine service of the day, to take from the Holy Table a certain vessel previously placed thereon, filled with a black powder, being or resembling ashes; and did then bless or consecrate the same, and did then rub a portion of such powder on the foreheads of certain persons, members of the congregation, who then knelt before you for that purpose (to wit, a certain other clergyman then present, the person called the ceremoniarus, a person called a ruler of the choir, and certain acolytes, or boys); and did further then publicly invite any other members of the congregation to come forward for the like purpose; after which, none others having come forward, the Communion service was commenced and proceeded with.

"XIV. That you, the said Rev. John Purchas, on the day of the Purification of the Virgin Mary, February the 2d, 1869, in the said church or chapel of St. James's, Brighton, aforesaid, in the morning, and when no artificial light was necessary, during the performance of Divine service, to wit, while the Litany was being read, censed or caused to be censed, and afterward sprinkled or caused to be sprinkled with holy water, or water previously blessed or consecrated, a number of candles then placed and being on a small table close to the Communion Table, and that you then, after the Litany was finished and before the commencement of the Communion service, lighted the said candles, and distributed them to divers members of the congregation, who then, by your direction or sanction, held up the same so lighted."

The charges contained in the latter part of this article I have already considered.

"XXI. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on divers occasions (to wit, on the morning of Sunday, January 31st, 1869; Sunday, February the 7th, 1869; Sunday, February the 28th, 1869; Sunday, March the 14th, 1869; Sunday, March the 21st, 1869; Easter Sunday, March the 28th, 1869; and Whit-Sunday, May the 16th, 1869), caused a small bell to be rung divers times during the Prayer of Consecration in the



service of the Holy Communion, such ringing being simultaneous and connected with the consecration of the elements, and with the elevation of them, as in the preceding articles mentioned.

“XXII. That you, the said Rev. John Purchas, on several occasions, in the said church or chapel of St. James’s, Brighton, aforesaid (to wit, on Sunday, December the 27th, 1868; Sunday, January the 17th, 1869; Sunday, January the 31st, 1869; Sunday, February the 7th, 1869; and Whit-Sunday, May the 16th, 1869), caused to be said or sung, before the reception of the elements and immediately after the Prayer of Consecration in the Communion service, the words, or hymn, or prayer, commonly known as ‘The Agnus,’ that is to say:—‘O Lamb of God, that takest away the sins of the world, have mercy on us;’ which said words are appointed to be said only as a part of the said hymn or prayer at the conclusion of the said service, namely, after the reception of the elements by the communicants is completely ended, and after the Lord’s Prayer and the other prayer then appointed and the ‘Gloria’ have been said, and immediately before the final blessing.”

“XXVIII. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on Sunday, March the 14th, 1869, at evening service, and immediately on the conclusion of your sermon, gave notice that on the next day there would be ‘a mortuary celebration for the repose of a sister at eleven o’clock;’ and that on Monday morning, March the 15th, 1869, while performing Divine service in the said church or chapel, namely, while reading the Communion service, immediately after the Collect for the Queen, and before the Epistle, you interpolated and said the following words, that is to say:—‘O God! whose property is ever to have mercy and to forgive, be favourable unto the soul of this Thy servant’ (thereby meaning the soul of the deceased person for whose repose the said mortuary celebration was made), ‘and blot out all her iniquities, that she may be loosed from the chains of death, and be found meet to pass unto the enjoyment of life and felicity through Jesus Christ our Lord. Amen.’ After which, 1 Thess. chap. iv. verse 13 to verse 18 was read as the Epistle, and the rest of the service was proceeded with; John chap. vi. verse 37 to verse 40 being read as the Gospel.”

“XXXIII. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on Whit-Sunday evening, May the 16th, 1869, at the usual hour for, and immediately before the commencement of evening prayer, and in the presence of the congregation then assembled to hear Divine service, made, received, or admitted a new acolyte,

or choir boy, by causing him then to kneel on one of the steps before the Holy Table, and reading some words or sentences out of a book, and making the sign of the cross over him, and putting into his hands a candlestick with candle, and afterwards, in like manner, putting into his hands decanters or glass bottles of wine and of water, those actions collectively being intended as and constituting a religious rite or ceremony."

I think these articles are substantially proved; and that in these circumstances the additional rites or ceremonies must be considered as illegal, on the principle of the decision in *Martin v. Mackonochie*; and I accordingly admonish Mr. Purchas to abstain from the use or sanction of the particular rites and ceremonies so charged for the future.

I now approach the consideration of a group of articles which have been proved, and which appear to me to be expressly governed by the judgments in *Martin v. Mackonochie* and *Flamank v. Simpson*.<sup>1</sup> They are as follows:—

"VIII. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, did, on the said 8th day of November 1868; the 17th day of January 1869; and the 16th day of May 1869, cense, or permit to be censed, during Divine service, the said crucifix, so placed and standing on the said Holy Table, or narrow ledge, as in the 6th preceding article mentioned."

"X. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on divers occasions (to wit, on Sunday, February the 28th, 1869; on Sunday, March the 14th, 1869; on Sunday, March the 21st, 1869; and on Easter Sunday, March the 28th, 1869), used lighted candles on the Holy Table, or Communion Table (or on a ledge immediately over the said table, and appearing and intended to appear part thereof), during the celebration of the Holy Communion, as a matter of ceremony, and at times when such lighted candles were not wanted for the purpose of giving light, and permitted and sanctioned such use of lighted candles.

"XII. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid (on the day of the Purification of the Virgin Mary, February the 2d, 1869; on Sunday, February the 7th, 1869; on Sunday, February the 28th, 1869; on Sunday, March the 14th, 1869; on Sunday, March the 21st, 1869; on Easter Sunday, March the 28th, 1869; and on Whit-Sunday, May the 16th, 1869), used incense for censuring persons and things, and for other purposes, as a matter of ceremony, in and during the celebration of the Holy Com-

<sup>1</sup> *Vide supra.*

munion, and also in and during other parts of Divine service, and there permitted and sanctioned such use of incense."

"XV. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, in and during the Communion service, on divers occasions (to wit, on Christmas Day, 1868; on Sunday, December the 27th, 1868; on Sunday, February the 7th, 1869; on Ash Wednesday, February the 10th, 1869; on Sunday, February the 28th, 1869; on Sunday, March the 14th, 1869; and on Easter Sunday, March the 28th, 1869), during the celebration of the Holy Communion, and as part of the ceremonies thereof, mixed water with the sacramental wine used in the administration of the Holy Communion, and permitted and sanctioned such mixing and the administration to the communicants of the wine and water so mixed."

"XVII. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on divers occasions (to wit, on Sunday, February the 7th, 1869; on Ash Wednesday, February the 10th, 1869; on Sunday, February the 28th, 1869; on Sunday, March the 14th, 1869; on Sunday, March the 21st, 1869; on Easter Sunday, March the 28th, 1869), during the Prayer of Consecration in the order of the administration of the Holy Communion, elevate the paten or one of the wafers on the Communion Table for the Holy Communion above your head, and permitted and sanctioned such elevation by the other officiating ministers, and took into your hands the cup and elevated it above your head during the Prayer of Consecration aforesaid, and permitted and sanctioned the cup to be so taken and elevated as aforesaid, by the other officiating ministers; and that you also, during such Prayer of Consecration, knelt or prostrated yourself, and sanctioned such kneeling or prostrating by the other officiating ministers."

"XXIII. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on Whit-Sunday morning, May the 16th, 1869, during the Communion service, as officiating minister, after receiving the alms contributed at the offertory, elevated the same, and then, placing the same for a moment on the Holy Table, did forthwith remove the same and hand them to an acolyte or attendant, who took them away and placed them on the credence table, instead of suffering the same to remain on the Holy Table."

The next article seems to me to contain charges undistinguishable in principle from the practices which are condemned in those judgments, and in that which I have just delivered in the case of *Mr. Wix*.<sup>1</sup> It was duly proved, and is as follows:—

<sup>1</sup> *Vide supra, Sumner v. Wix.*

"XI. That you, the said Rev. John Purchas, on Christmas Day, 1868; on the day of the Purification of the Virgin Mary, February the 2d, 1869; and on Easter Sunday, 1869, used lighted candles, standing on and about and before the Communion Table during the performance of other parts of the morning service than the Communion Service, as a matter of ceremony, and when they were not wanted for the purpose of giving light. That you also during the whole of Divine service on Easter Sunday, 1869, kept a very large lighted candle, called a paschal taper, placed and standing towards the south side of the Communion Table, as a matter of ceremony, and when it was not wanted for the purpose of giving light. That you also, at various times, during the performance of Divine service (to wit, on Sunday morning, November the 1st, 1868; Sunday morning, March the 21st, 1869; and Whit-Sunday, May the 16th, 1869), caused acolytes, or attendants, as a matter of ceremony, to bear about, move, set down, and lift up various lighted candles when the same were not needed to give light."

I admonish Mr. Purchas to abstain for the future from doing or sanctioning the acts so charged in these seven articles.

I have now to consider the charge of administering in the Holy Eucharist wine with which a little water has been mingled. The article containing this charge is as follows:—

"XVI. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on Whit-Sunday, May the 16th, 1869, administered wine mixed with water instead of wine to the communicants at the Lord's Supper."

I had occasion to consider this subject in my judgment in *Martin v. Mackonochie*, and I then observed:—

"It appears that from a very early period—the precise date is uncertain—a custom prevailed amongst Christians of adding a very small quantity of water to the wine which forms one element of the Blessed Sacrament. This custom, whether it arose from a belief that the wine used by the Jews at the Passover, and by our Lord at the Last Supper, was mingled with water, or from some reason symbolical of His passion, is wholly unconnected with any papal superstition, or any doctrine which the Church of England has rejected. It has the warrant of primitive antiquity and of the undivided Church in its favour."—(2 *L. R. Adm. and Eccl.*, p. 216.)<sup>1</sup>

To the authorities there cited I would add this from Dr. Smith's *Dictionary of the Bible*, title "Wine" (vol. iii. p. 1778): "The wine was mixed with warm water on these occasions," referring to the Passover, "as implied in the notice of the

<sup>1</sup> *Vide supra*, pp. 91, 92.

warming kettle (*Pesach.* 7, § 13). Hence, in the early Christian Church, it was usual to mix the Sacramental wine with water, a custom as old, at all events, as Justin Martyr's time (*Apol.* i. 65)." I also referred to the Rubric in the first Prayer-Book, and the omission of the order "putting thereto a little pure and clear water" in the later Prayer-Books; and I decided that "the ceremony or manual act of mixing the water with the wine during the celebration of the Eucharist" was illegal.

At the same time I added, "I do not say that it is illegal to administer to the communicants wine in which a little water has been previously mixed." At that time I had in my mind, among other authorities, that of Bishop Andrewes, who appears to have used the mixed chalice in the Chapel Royal, all the time he was Dean of it, and who, in the form that he drew up for the consecration of a church, expressly directed it to be used (*Wheatly, Common Prayer*, p. 281); and that of Bishop Cosin, who, speaking of the practice under the Elizabethan Prayer-Books, says, "Our Church forbids it not, for aught I know, and they that think fit may use it, as some most eminent among us do at this day."—(*Notes on the Book of Common Prayer*, 1st series, p. 154, Works, vol. v.)

The subject is treated of with much learning by Mr. Palmer, in his *Origines Liturgicæ*; he says:—

"In the Church of England the wine of the Eucharist was always, no doubt, mixed with water. In the canons of the Anglo-Saxon Church, published in the time of King Edgar, it is enjoined that 'no priest shall celebrate the Liturgy unless he have all things which pertain to the Holy Eucharist, that is, a pure oblation, pure wine, and pure water.' In after ages we find no canons made to enforce the use of water, for it was an established custom. Certainly none can be more canonical, and more conformable to the practice of the primitive Church. In the English Church it has never been forbidden or prohibited, for the Rubric which enjoins the priest to place bread and wine on the table, does not prohibit him from mingling water with that wine."—(Vol. ii. p. 76.)

In this opinion, provided that the mingling be not made at the time of the celebration, so as to constitute a new rite or ceremony, I agree. I therefore pronounce that Mr. Purchas has not been guilty of a canonical offence in this matter.

The 20th article charges as follows:—

"XX. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on divers occasions (to wit, on Sunday, January the 31st, 1869; Sunday, February the 7th, 1869; Monday, March 15th, 1869; on

Sunday, March 21st, 1869; on Easter Sunday, March the 28th, 1869; and Whitsunday, May the 16th, 1869), in the administration of the Holy Communion, used wafer bread (being bread made in the special shape and fashion of circular wafers) instead of bread such as is usual to be eaten, and did administer the same to the communicants, that is to say, one such wafer to each of them."

My first observation upon this article is, that it is not proved as laid; the witness Verral deposed that the bread was in the form of a thin wafer, that he saw it administered to the communicants, but was not sufficiently close to know that what was administered was not a portion of each wafer. The present Rubric directs that the priest is to break the bread during the course of the Prayer of Consecration. There is no evidence before me that the wafer was not broken; and the only question I have to consider is, whether wafer-bread (that is, bread in the shape of a wafer) may lawfully be administered.

The Rubric which governs this question is as follows:—"And to take away all occasion of dissension and superstition which any person hath or might have concerning the bread and wine, it shall suffice that the bread be such as is usual to be eaten; but the best and purest wheat bread that may conveniently be gotten." This Rubric varies from that of the second Prayer-Book of Edward VI., only by the substitution of the words, "all occasion of dissension and superstition" for "the superstition."

Previously to these Rubrics unleavened bread was used in our Church, and this custom was continued by the first Prayer-Book of Edward VI., the Rubric to which was as follows:—

"For avoiding of all matters and occasion of dissension, it is meet that the bread prepared for the Communion be made, through all this realm, after one sort and fashion, that is to say, unleavened and round, as it was afore, but without all manner of print, and something more larger and thicker than it was, so that it may be aptly divided in divers pieces; and every one shall be divided in two pieces at the least, or more, by the discretion of the minister, and so distributed. And men must not think less to be received in part than in the whole, but in each of them the whole body of our Saviour Jesus Christ."

It appears, therefore, that while the first Rubric prescribed a uniformity of size and material, the later and the present Rubric are contented with the order that the purest wheaten flour shall suffice, and the bread may be leavened according to the use of the Eastern, or unleavened, according to the use of the Western Church. The Elizabethan Rubric, which is practically the same as the present, received this *contemporanea*

*expositio* from that Queen's Injunctions (A.D. 1559), which were as follows : Item—

“Where also it was in the time of King Edward the Sixth used to have the Sacramental bread of common fine bread, it is ordered, for the more reverence to be given to these holy mysteries, being the Sacraments of the body and blood of our Saviour Jesus Christ, that the same Sacramental bread be made and formed plain, without any figure thereupon, of the same finenesse and fashion round, though somewhat bigger in compasse and thicknesse, as the usuall bread and wafer” (variously printed water), “heretofore named singing-cakes, which served for the use of the private masse.”—(*Annotated Book of Common Prayer*, p. 198.)

And, in 1570, Archbishop Parker wrote as follows to Sir W. Cecil :—

“January 8, 1570.

“SIR,—Where upon the return of my Lord of London from the court, we had communication of the Communion bread, and he seeming to signify to me that your honour did not know of any rule passed by law in the Communion-Book that it may be such bread as is usually eaten at the table with other meats, etc., I thought it good to put you in remembrance, and to move your consideration in the same. For it is a matter of much contention in the realm ; where most part of Protestants think it most meet to be in wafer-bread, as the injunction prescribeth, divers others, I cannot tell of what spirit, would have the loaf-bread, etc. And here upon one time at a sessions would one Master Fogg have indicted a priest for using wafer-bread, and me indirectly for charging the wafer-bread by injunction, where the judges were Mr. Southcoots and Mr. Gerrard, who were greatly astonied upon the exhibiting of the book. And I being then in the country, they counselled with me, and I made reasons to have the injunction prevail.

“First, I said, as her Highness talked with me once or twice in that point, and signified that there was one proviso in the Act of the Uniformity of Common Prayer that by law is granted unto her, that if there be any contempt or irreverence used in the ceremonies or rites of the Church, by the misusing of the orders appointed in the book, the Queen's Majesty may, by the advice of her commissioners, or metropolitan, ordain and publish such further ceremonies, or rites, as may be most for the reverence of Christ's holy mysteries and sacraments, and but for which law her Highness would not have agreed to divers orders of the book ; and by virtue of which law she published further order in her injunctions both for the Communion-bread and for the placing of the tables within the quire. They that like not.

the injunctions force much the statute in the book. I tell them that they do evil to make odious comparison betwixt statute and injunction, and yet I say, and hold, that the injunction hath authority by proviso of the statute. And whereas it is said in the rule, that 'to take away the superstition which any person hath, or might have, in the bread and wine, it shall suffice that the bread be such as is usually to be eaten at the table with other meats, etc.' 'It shall suffice,' I expound, where either there wanteth such fine usual bread, or superstition be feared in the wafer-bread, they may have the Communion in fine usual bread, which is rather a toleration in these two necessities, than is in plain ordering, as is in the injunction.

"This I say to show you the ground which hath moved me and others to have it in the wafer-bread; a matter not greatly material, but only obeying the Queen's Highness, and for that the most part of her subjects disliketh the common bread for the Sacrament. And therefore, as her Highness and you shall determine, I can soon alter my order, although now quietly received in my diocese, and I think would breed some variance to alter it. I hear also that in the court you be come to the usual bread. Sir, the great disquiet babbling that the realm is in in this matter maketh me thus long to babble, and would be loth that now your saying or judgment should be so taken as ye saw a law that should prejudice the injunction."—(*Correspondence of Archbishop Parker*, No. 283, p. 375.)

This is an authority which must command great respect in this Court, and from which I see no reason to dissent, more especially as it proceeds upon a principle of construction similar to that to which I have already adverted as having been adopted in *Westerton v. Liddell*, with respect to the covering of the Holy Table. I should add that, according to Bishop Cosin, this "liberty of using wafer-bread was continued in divers churches of the kingdom—and in Westminster for one—till the 17th of King Charles," *i.e.* A.D. 1643.—(*Works*, vol. v. p. 481.) I am of opinion that no offence against ecclesiastical law has been proved to have been committed by Mr. Purchas in this matter.

The 6th and 7th articles contain the following charges:—

"VI. That you, the said Rev. John Purchas, on the several occasions hereinafter in this article mentioned, in the said church or chapel of St. James's, Brighton, aforesaid (to wit, on Sunday, November the 1st, 1868; on Sunday, November the 8th, 1868; Sunday, January the 31st, 1869), placed or caused to be placed on the Holy Table, or on a narrow ledge resting thereon or connected therewith, or fixed immediately above the



same, so as to appear to the congregation to be in contact or connection with the Holy Table, a large metal crucifix, with the figure of the Saviour thereon (the same being intended for a ceremonial or religious purpose, *and not being a part of the architectural decorations of the church*, but being placed on such ledge with the object and intention of being made to appear a part of the furniture of the Holy Table); and that you, on the said several occasions, allowed the same so placed to remain there during the performance of Divine service, and during the celebration of the Holy Communion. That you, the said Rev. John Purchas, also, during Lent (to wit, on Sunday, February the 28th, 1869; on Sunday, March the 14th, 1869; and on Good Friday, March the 26th, 1869), having covered, or caused to be covered, the said crucifix so placed on the Holy Table, or narrow ledge as aforesaid, with a white veil striped with a red cross, allowed the same to remain on the said Holy Table, or narrow ledge, so covered during the performance of Divine service. That you also afterwards (to wit, on Easter Sunday, March the 28th, 1869), having previously removed, or caused to be removed, such veil, kept the said crucifix during Divine service so uncovered; the circumstance of the said crucifix being so kept covered and uncovered being intended as, and constituting on each of the said occasions, a ceremonial and symbolical observance during and connected with such Divine service."

"VII. That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on the following occasions (to wit, on Sunday, November the 8th, 1868; January the 17th, 1869; and Whit-Sunday, May the 16th, 1869), did immediately before and during the performance of Divine service bow and do reverence to the said crucifix."

I think I am bound to conclude from the evidence before me, unimpeached as it is by any other testimony, and in the absence of any explanation, that the crucifix has been introduced into or connected with the performance of the services prescribed by the Prayer-Book, so as to constitute an additional rite or ceremony. And I must admonish Mr. Purchas to abstain from the practice complained of in these articles.

The next charge in order is the—

IXth. "That you, the said Rev. John Purchas, in the said church or chapel of St. James's, Brighton, aforesaid, on divers occasions, to wit, on Sunday, November the 1st, 1868; Sunday, November the 8th, 1868; on the day of the Purification of the Virgin Mary, February the 2d, 1869; on Sunday, February the 7th, 1869; and on Whit-Sunday, May the 16th, 1869), caused vases of flowers to be placed on the Holy Table, or on a

narrow ledge resting thereon, or fixed immediately above the same, so as to appear, and with the object and intention of being made to appear, to the congregation to be in contact or connection with the Holy Table, and allowed them to remain so placed on each of the said occasions during the performance of Divine service. That you also, during Lent, 1869, caused the said vases of flowers to be removed and taken away; and again afterwards, more especially on Easter Sunday, March the 28th, 1869, and on Whit-Sunday, May the 16th, 1869, replaced, or caused to be replaced, the said vases with the same or other flowers; and that you also profusely decorated, or caused to be profusely decorated, the said Holy Table with flowers, the circumstance of such vases and flowers being so placed and kept on the Holy Table, or removed therefrom, being intended by you as and constituting a ceremonial and symbolical observance."

With regard to this charge, there is no evidence that the flowers were used as an additional rite or ceremony, or as an ornament in the sense affixed to that word in the judgment of the Privy Council, in *Westerton v. Liddell*. They appear to me an innocent and not unseemly decoration, and one not ministering or subsidiary to any usage or doctrine which the Church has rejected or abrogated, and to be in the same category with the branches of holly at Christmas, and the willow blossoms on Palm Sunday, with which our churches have very generally been adorned. I have considered the Bishop of Exeter's judgment on this point to which I was referred, of which I think it is enough to say that it was given nearly ten years before the decision in *Westerton v. Liddell* had settled the law, and drawn the distinction between ornaments (ornamenta) and decorations.

And here I must draw attention to the language of the Privy Council in *Martin v. Mackonochie* :—

"There is a clear and obvious distinction between the presence in the church of things inert and unused, and the active use of the same things as a part of the administration of a sacrament or of a ceremony. Incense, water, a banner, a torch, a candle and candlestick, may be parts of the furniture or ornaments of a church; but the censuring of persons and things, or, as was said by the Dean of Arches, the bringing in incense at the beginning or during the celebration, and removing it at the close of the celebration of the Eucharist; the symbolical use of water in baptism, or its ceremonial mixing with the sacramental wine; the waving or carrying the banner; the lighting, cremation, and symbolical use of the torch or candle; these acts give a life and meaning to what is otherwise

inexpressive, and the act must be justified, if at all, as part of a ceremonial law.”—(2 P. C. App., p. 387.)

I do not pronounce that Mr. Purchas has been guilty of an ecclesiastical offence in this matter.

The 29th article charges as follows :—

“That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on the occasion of the celebration of the Holy Communion, at midnight, on Christmas Eve, the 24th of December 1868, placed, or caused to be placed, on a shelf just above the credence table in the said church, a modelled figure of the infant Saviour, with two lilies on either side, the same being so then placed as a part of the ceremonial of the service of that night, and which was subsequently removed; and that on Whit-Sunday, May the 16th, 1869, you placed, or caused to be placed, in the said church or chapel, above and hanging over the Holy Table, a figure, image, or stuffed skin of a dove in a flying attitude, and kept the same so placed during Divine service, the same being so then placed and kept as a part of the ceremonial of the service.”

I think the result of the evidence is, that these figures, having regard to the time and the services during which they were brought in and removed, being also emblematic in their character, were ceremonially used upon the occasions referred to, and that, according to the judgment in *Martin v. Mackonochie*, they were therefore illegal. It is very possible, however, that these things, perfectly innocent in themselves, were in fact not so used as to fall under the prohibition which attaches to the introduction of new ceremonies; and that, if an explanation had been offered, or other evidence adduced by the defendant, I might have arrived at the conclusion that the things in question belonged merely to the category of what the Privy Council have termed “inert” decorations, and were not actively used in the service; in which case, as at present advised, I should not have pronounced them illegal.

The 24th article charges as follows :—

“That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on Good Friday, 1869, when there was no administration of the Holy Communion, caused or permitted the Holy Table to be and remain during Divine service without any decent covering, such as is enjoined and required by the 82d Canon of the Church.”

The leaving of the Holy Table wholly bare and uncovered during Divine service is, I believe, a practice without warrant from primitive use or custom; but it is certainly contrary to the 82d Canon, which governs this question, and is, therefore, illegal.

The 25th article charges as follows :—

“That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on Sunday, December the 27th, 1868; on Palm Sunday, 1869; and on Whit-Sunday, May the 16th, 1869, caused holy water, or water previously blessed or consecrated, to be poured into divers receptacles for the same in and about the said church, in order that the same might be used by persons of the congregation before and during the time of Divine service, by way of ceremonial application thereof; and yourself used the same, or caused or permitted the same to be used by others.”

There is no evidence to sustain the averments that Mr. Purchas caused holy water, or water previously blessed or consecrated, to be poured into divers receptacles in and about the church, or that he blessed or consecrated any water, or that he used it himself, or that he caused it to be used by others; there is evidence that there was water in the church, and that some of the congregation crossed themselves with it. I am of opinion that the criminal charges laid against Mr. Purchas in this article are not proved.

The 31st, 32d, and part of the 19th articles charge as follows :—

“XXXI. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on divers occasions (to wit, during Divine service, on the mornings of Sunday, January the 17th, 1869; and Sunday, January the 31st, 1869; on the morning of the Feast of the Purification of the Virgin Mary, February the 2d, 1869; and on the morning of Sunday, February the 7th, 1869; and on Whit-Sunday, May the 16th, 1869), during the saying of the Apostles’ Creed and Nicene Creed, and at the pronouncing of the absolution in the order for the Holy Communion, and at the giving of the elements to the communicants, and on certain other occasions (to wit, during Divine service on Sunday evening, February the 7th, 1867” (*sic*), “and Whit-Sunday evening, May the 16th, 1869), during the pronouncing of the benediction after the sermon, and on certain other occasions (to wit, during the Communion service, on Ash Wednesday, February the 10th, 1869; and on Sunday, February the 28th, 1869), when about to mix water with the wine, and when about to consecrate the same, you, being then the officiating minister, made the sign of the cross by the appropriate gesture for that purpose, the same being intended as and constituting a ceremony.”

“XXXII. That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, you being present, and responsible for the due performance of Divine

service therein, on Sunday morning, January the 31st, 1869, during the Communion service, directed, caused, or permitted and sanctioned, a certain clergyman then assisting you in the performance of Divine service by reading the Gospel for the day, to kiss the book from which he read the Gospel, such kissing of the book being intended as and constituting a matter of ceremony, the said book, during such reading of the Gospel, being, in a ceremonial manner, held before him by a deacon or attendant."

"XIX. That you, the said Rev. John Purchas, on a certain occasion (to wit, on Sunday morning, January 31st, 1869), in the said church or chapel of St. James's, Brighton, aforesaid, while reading the prayer for the 'whole state of Christ's Church Militant here on earth,' stood, with your back to the people, in front of the middle of the Holy Table, and while reading the word, 'oblations,' as a religious ceremony took up the chalice, then being on the said Holy Table, and elevated it above your head."

The ruling of the Privy Council, in the case of *Martin v. Mackonochie*, with respect to the kneeling of the priest during the Communion service, seems to me to apply to the acts of devotion complained of in these articles, which I must, therefore, pronounce illegal.

The latter part of the 17th article—I have already referred to the charges contained in the former part—charges as follows:—

"And that you also, during the whole of such Prayer of Consecration, stood at the middle of that side of the Holy Table which, if the said Holy Table stood at the east end of the said church or chapel (the said table in St. James's Chapel, in fact, standing at the west end thereof), would be the west side of such table, in such wise that you then stood between the people and the said Holy Table, with your back to the people, so that the people could not see you break the bread or take the cup into your hand."

I must observe that the Rubric does not require that the people should see the breaking the bread or the taking of the cup into the priest's hands; and, if it did so prescribe, the evidence in this case would establish that all the congregation could see him take the cup into his hands, and some of them, at least, could see him break the bread. But, in truth, the question appears to me to have been settled by the Privy Council, in the case of *Martin v. Mackonochie*.

"The Rubric before the Prayer of Consecration then follows, and is in these words:—

" 'When the priest, standing before the table, hath so ordered

the bread and wine that he may with the more readiness and decency break the bread before the people, and take the cup into his hands, he shall say the Prayer of Consecration, as follows :—

“ Their Lordships entertain no doubt on the construction of this Rubric, that the priest is intended to continue in one posture during the prayer, and not to change from standing to kneeling, or *vice versa* ; and it appears to them equally certain that the priest is intended to stand and not to kneel. They think that the words ‘ standing before the table ’ apply to the whole sentence ; and they think that this is made more apparent by the consideration that acts are to be done by the priest before the people, as the prayer proceeds (such as taking the paten and chalice in his hands, breaking the bread, and laying his hand on the various vessels), which could only be done in the attitude of standing.”—(2 P. C. App., p. 382.)

I dismiss the charge against Mr. Purchas.

The 18th article charges as follows :—

“ That you, the said Rev. John Purchas, on a certain occasion (to wit, on Sunday morning, November the 1st, 1868), directed, sanctioned, or permitted a certain other clergyman, then officiating for you, in the presence of you, the said Rev. John Purchas, to read the Collects next before the Epistle for the day in the Communion service, standing in front of the middle of the Holy Table with his back to the people ; and that on a certain occasion (to wit, Sunday morning, January the 17th, 1869), you, the said Rev. John Purchas, read such Collects yourself, standing with your back to the people.”

As to the charge, the proof is, that both Mr. Purchas and the assistant clergyman on the several occasions stood before the Holy Table with their backs to the people. It is not proved that the assistant clergyman, on the occasion mentioned, stood before the people. The Rubric which governs the position of the minister at this period of the service is the one preceding the Lord’s Prayer at the beginning of the Communion service :—“ And the priest, standing at the north side of the table, shall say the Lord’s Prayer, with the Collect following, the people kneeling ;” and, after the interval of the Ten Commandments, the Rubric enjoins the priest to stand as before. I am aware, that learned persons hold that these words, “ the north side,” mean “ the north side of the table’s front,” and possibly they do so ; but in the absence of any argument before me to this effect, I think I must take the *prima facie* meaning of the Rubric, and consider it as the north side of the whole table ; and upon this ground I must decide against Mr. Purchas upon this article.

Two charges are contained in that part of the 19th article to which I have not as yet referred :—

(a.) “And on a certain other occasion (to wit, on Sunday evening, January the 31st, 1869) you, the said Rev. John Purchas, did, in the said church or chapel, during the performance of Divine service, and while reading the Collects following the Creed, stand in front of the middle of the Holy Table at the foot of the steps leading up to the same, with your back to the people.”

(b.) “And that on a certain occasion, during the performance of Divine service in the said church or chapel (to wit, on Sunday morning, February the 7th, 1869), you, the said Rev. John Purchas, directed, sanctioned, or permitted the Epistle in the Communion service to be read in your presence by a minister standing with his back to the people.”

The first offence appears to me plainly contrary to the Rubric ; and the second, though, perhaps, not governed by a positive order in a Rubric, is obviously contrary to the intent of the Prayer-Book, the Epistle not being a prayer addressed to God, but a portion of the Scripture read to the people.

The 30th article charges as follows :—

“That you, the said Rev. John Purchas, in the said church or chapel of St. James’s, Brighton, aforesaid, on Sunday morning, November the 1st, 1868, publicly during the performance of Divine service, that is to say, at the conclusion of the Nicene Creed, gave notice that on the morning of the next day there would be ‘a high celebration of the Holy Eucharist’ at eleven o’clock ; and that you, on the same day, after the sermon, gave, or caused to be given, notice that on the next Friday, ‘being the Feast of St. Leonard,’ there would be a celebration of the Holy Eucharist at eleven o’clock : and that on Sunday, the 8th of November 1868, after the Nicene Creed, you gave notice that the Holy Eucharist would be celebrated on Wednesday, ‘being the Feast of St. Martin ;’ and on Friday, ‘being the Feast of St. Britius.’ And that on Sunday morning, January the 31st, 1869, after the Nicene Creed, you gave notice that on Tuesday next, being the Festival of Our Lady, there would be a high celebration of the Holy Eucharist at eleven o’clock in the morning.”

The Prayer-Book does not warrant, in my opinion, this particular mode of announcing that the Eucharist will be celebrated. According to the Rubric, after the Nicene Creed, notice is then to be given of the Communion, and according to the Rubric, after the Church Militant prayer, “when the minister giveth warning for the celebration of the Holy Communion . . . after the sermon or homily ended he shall read

this exhortation following." It appears to me that the epithet "high" has no sanction from the Rubric, and, though perhaps in itself not very material, cannot legally be used. It appears from the evidence that at different times notices were given that the feast of St. Leonard, St. Martin, and St. Britius would be observed. The Rubric, after the Nicene Creed, directs that "the curate shall declare unto the people what holy-days or fasting days are in the week following to be observed." Mr. Purchas is not charged with having violated the law by omitting to give notice of these holy-days or fasting days, but by having given notice of holy-days which the Church has not directed to be observed. I think the holy-days which are directed to be observed are those which are to be found after the preface of the Prayer-Book, under the head of "A Table of all the Feasts that are to be observed in the Church of England throughout the year." The feasts of St. Leonard, St. Martin, and St. Britius are not among these; I therefore think the notices of them were improper, and I must admonish Mr. Purchas to abstain from giving such notices for the future.

This is my judgment upon the particular charges brought against the defendant; but I cannot conclude it without once again referring to the general question to which these charges relate. In the judgment in *Martin v. Mackonochie* I said:—

"Before I proceed to consider the greater question, whether they are ceremonies forbidden by the ecclesiastical law of England, and more especially by that part of it which consists of the provisions of the Prayer-Book and the Statute of Uniformity, I think it right to draw attention to the judgment of the Church Universal, and especially of 'that pure and apostolical branch of it established in this realm,' upon the general subject of ceremonies.

"And from that judgment it will, I think, appear that an essential distinction is drawn between those which are, from their origin, immutable, and those which it is competent to the proper authorities to mould according to the varying necessities and exigencies of each particular Church."—(2 *Adm. and Eccl.*, p. 136.)<sup>1</sup>

I then cited various authorities upon this point, and I added—

"I have thought it expedient to recite the foregoing authorities upon the nature of rites and ceremonies, in order to fortify my position, that the questions now pending before me in no way affect the relations of the Church of England to the Church Catholic, but have reference solely to matters of detail and order in her ministration, which every independent church

<sup>1</sup> *Supra*, p. 20.



has at all times claimed and exercised."—(2 *Adm. and Eccl.*, p. 146.)<sup>1</sup>

I have deemed it well to repeat this language upon the present occasion, because I think that the proposition which it embodies would, if temperately and impartially considered, tend to prevent the litigation and allay the discord which is at the present moment distracting the energies and weakening the authority of our Church.

Now, with respect to the question of costs, I shall condemn the defendant in the costs of all those charges which have been substantiated against him, and as the defendant has not appeared I shall make no order as to the costs of those charges which the promoter has failed to substantiate.

The course which the Registrar will probably think it proper to pursue will be to tax the promoter's whole costs of suit, and subsequently to deduct from that sum such a proportion as he may think fairly represents the costs of the unsubstantiated charges. It will probably be found a case in which a very close estimate cannot be made; and considerable discretion, subject to the revision of the Court, must be left to the Registrar.

<sup>1</sup> *Supra*, p. 29.

THE OFFICE OF THE JUDGE PROMOTED BY  
SHEPPARD v. BENNETT.

*The Court of Arches has a right, under the general Ecclesiastical law, to refuse letters of request until proper grounds are assigned why they should be accepted; and this right applies also to cases brought before it under the Church Discipline Act.*

*The Court of Arches may therefore exercise its discretion and refuse letters of request sent by the Bishop, where the case is one of heresy.*

*It is not competent to the promoter, in a case of heresy, to charge the defendant with maintaining an heretical doctrine which is not specifically charged, and which is founded on passages not specifically set forth in the citation; or with maintaining an heretical doctrine which is not contained in the defendant's book, but in another book to which he refers.*

*It is lawful for a clerk in Holy Orders to affirm that there is a real, actual, and objective presence of Our Lord, external to the communicant, under the form of bread and wine at the Holy Communion.*

*It is not lawful for him to affirm a visible presence of our Lord at the Holy Communion.*

*It is lawful for him to affirm that there is in some sense a sacrifice offered at the celebration of the Holy Communion.*

*It is lawful for him to affirm that adoration is due to our Lord present, under the form of bread and wine, at the celebration of the Holy Communion.*

*It is not lawful for him to affirm that adoration is due to the consecrated elements.*

THIS case originally came before me on motion to accept the letters of request from the then Lord Bishop of Bath and Wells.

On the 30th of April 1869 I delivered the first judgment here printed, in which I declined to do so.

The promoter appealed to the Privy Council, who reversed my judgment, and ordered me to accept the letters of request.

I therefore accepted the letters of request, and cited the defendant. He did not appear, and the case then came on for the admission of the articles of charge.

On the 18th of November 1869 I delivered the second judgment here printed, in which I ordered certain reformatory of the articles. The promoter appealed from this judgment to the Privy Council, who affirmed my sentence.

The case then came on for hearing, and on the 20th of July 1870 I delivered the third judgment here printed, dismissing the defendant.

The promoter appealed from this judgment to the Privy Council, who affirmed my decision.

This case is reported, in the first stage, in the *Archives Court, Law Reports*, 2 *Admiralty and Ecclesiastical*, p. 335, in the Privy Council, *Law Reports*, 2 *Privy Council Appeals*, p. 450.

In the second stage, in the *Archives Court*, 39 *Law Journal Ecclesiastical*, p. 59, in the Privy Council *Law Reports*, *Privy Council Appeals*, p. 350.

In the third stage, in the *Archives Court*, *Law Reports*, 3 *Admiralty and Ecclesiastical*, p. 167, in the Privy Council, *Privy Council Appeals*, p. 371.

**FIRST JUDGMENT.**—In this case, an application has been made to the Court to accept letters of request from the Bishop of Bath and Wells, under the provisions of the 13th section of 3 and 4 Vict. cap. 86, an Act for the discipline of the clergy.

It appears, from the recital in these letters, that the Rev. William James Early Bennett, a clerk in holy orders, Vicar of Frome Selwood, has been charged with committing an offence against the laws ecclesiastical, by the publication of a work containing heretical doctrines, in the diocese of London. The preferment of the accused clerk was situated in the diocese of Bath and Wells—the alleged offence was committed in the

diocese of London; therefore, if the accused clerk was to be criminally proceeded against in the Ecclesiastical Court, the provisions of the statute, to which I have referred, rendered it necessary that these proceedings should be taken, in the first instance, under the authority of the Bishop in whose diocese the alleged offence had been committed. The late Bishop of London issued a commission to certain persons to inquire into the grounds of the charge, and to report to him whether or no there was a case for further inquiry. They reported that there was a case for further inquiry. That report, and the evidence upon which it was founded, were afterwards filed in the registry of the diocese of Bath and Wells, according to the requirements of the statute; and it became necessary that any further proceedings in the matter should be carried on under the authority of that Ordinary. The statute provides, sect. 11, that after the report of the Commissioners, "the Bishop shall proceed to hear the cause, with the assistance of the assessors;" . . . "and upon the hearing of such case, the Bishop shall determine the same, and pronounce sentence thereupon, according to the ecclesiastical law." The statute further provides, sect. 13, "that it shall be lawful for the Bishop . . . if he shall think fit, either in the first instance or after the Commissioners shall have reported that there is sufficient *prima facie* ground for instituting proceedings, and before the filing of the articles, but not afterwards, to send the case, by letters of request, to the Court of Appeal of the province, to be there heard and determined, according to the law and practice of such Court." The Bishop of Bath and Wells has availed himself of this latter alternative, and has sent this case, by letters of request, to the Court of Arches.

It is to be observed that the statute does not empower the Bishop to send the case *simpliciter* to the Court of Appeal, but to send it by letters of request to that Court. If these letters are accepted by me, and the request of the inferior Court complied with, a decree, which is equivalent to a citation, will issue from this Court; the accused clerk will be cited, and the trial will take place, in the first instance, before this Court.

It has been argued that these letters of request are in truth letters of command, and that I have no option but to accept them. This argument is maintained, both by referring to the express words of the statute of the Queen, and to the law and practice with respect to letters of request previously to the passing of that statute. I am about to pronounce my opinion upon the soundness of this argument; and in order to make the conclusion at which I have arrived fully intelligible, it will be

necessary to state at some length the premises upon which it is founded.

First of all, however, it may be well to consider the necessary consequences which flow from the position of law.

It is the plain duty of every Bishop, having regard both to the nature of his office and to the obligations which at the time of his consecration he takes upon himself, to maintain within his diocese ecclesiastical discipline, and especially as to matters of heresy, such as are the subject of the present charge. But if the argument which has been addressed to me be sound, every Bishop in the province of Canterbury may devolve, at his own will and pleasure, upon the Court of the Archbishop, the execution of the most arduous part of his duty as diocesan. It is not necessary that he should state any reason for so doing; the natural order of things is reversed, and the inferior sends a mandate to the superior Judge, which, without inquiry, he must obey. It is not too much to say that such an exposition of the law requires to be very clearly demonstrated before it can be accepted. Inasmuch as letters of request are the technical description of a proceeding appertaining to ecclesiastical law—words of art, so to speak, derived from that system of jurisprudence—the examination of the question naturally falls under the two following divisions:—

(1.) The law which prevailed before the statute 3 and 4 Vict. cap. 86.

(2.) The law introduced by that statute.

Upon the first division of the subject the following observations have occurred to me:—It is hardly necessary to state that the proposition, that a Bishop can order his Metropolitan or Archbishop to do a particular act, such as to entertain a suit, is not to be found in the general Ecclesiastical Law. That law, as well as the Common Law of England, has indeed been careful to protect the Bishop from any undue assumption of jurisdiction by the Archbishop over him; but I am not aware of any instance in which the law has thought it necessary to protect the Archbishop from the usurpation of his suffragan. "Letters of Request," "*Litteræ Requisitionales*," as they are called in Oughton, are a form of procedure peculiar to the Canon Law, and certainly do not in their natural construction imply a command. A very learned Judge, however, Sir George Lee, in the case of *Butler v. Dolben* (2 Lee, p. 317), is reported to have said:—"As to the discretion of this Court, whether it shall accept or refuse letters of request when granted by a proper Judge, the Delegates held in the case of *Dr. Pelling v. Whiston* (1 Comyns' Rep., 190), that the Dean of the Arches was bound to receive them *ex debito justitiæ*; but that it was in the dis-

cretion of the inferior Judge whether he would grant them." As this is, I believe, the only authority which can be cited in support of the position that the acceptance of the letters of request is obligatory upon the superior Court, I have thought it right to examine very carefully the circumstances of this case. They are very remarkable:—The case of *Pelling v. Whiston*, which was argued in the years 1712-13, happened at a time of great political excitement, in which the Church was largely concerned, and which was not without its influence on the proceedings in this case. I remember that Lord Stowell said as to a case decided in 1719, in which religious and political feelings were much mixed up:—"I shall pass over a case which has been cited from the State Trials, as it was one of party heat that took place in times of party ferment, and is of smaller authority on that account."—(*Hutchins v. Denziloe and Loveland*, 1 Consist. Rep., 174). The history of the proceedings of this extraordinary case are to be found partly in Burnet's *History of his Own Times*, vol. vi.; partly in an account Whiston published of his own case in 1715; and partly in a note of Chief Baron Comyns (who was one of the counsel in the cause) of the proceedings before the Delegates (Comyns' Rep., p. 199). As the Delegates never gave reasons for their judgment, but little information is to be extracted from the record of their proceedings. Towards the close of the year 1710, Convocation had been summoned by the Queen for the transaction of business, mainly, if not exclusively, that it might pass a synodical judgment upon the writings of Whiston. Great doubt arose as to whether it was competent to that body to censure heretical doctrines and their maintainers. The opinion of the twelve judges and of the law officers of the Crown was in compliance with an address of Convocation taken by the Crown in 1711. Convocation was authorised to pass a sentence upon his works, which they condemned, but, from various reasons, the condemnation seems to have had no practical result; and in 1712 a Dr. Pelling, as a voluntary promoter of the office of the Judge, filed articles of heresy against Whiston, who dwelt within the exempt or peculiar jurisdiction of the Dean and Chapter of St. Paul's. The Commissary of the Court, Dr. Harwood, sent the case by letters of request to the Court of Arches; the Judge of the Court of Arches, Dr. Bettesworth, alleging that there was "no suggestion of any reason why the cause should not be brought before the proper Ordinary," in February, 1712, Dr. Harwood sent new letters of request, alleging as grounds that as Commissary he had not authority to inflict a proper punishment for heresy, as he had no commission from a Bishop; or, according to the minutes of the Delegates' Process Book, "on

account of gravity of matter, and doubt whether Commissary could inflict proper punishment, he humbly repeats his request." While the Court of Arches was considering the application of Dr. Harwood, it seems that Dr. Pelling prayed an original citation, not by letters of request, but under the statute of 23 Hen. VIII. cap. 9, to which I shall presently advert. On the 16th February Dr. Pelling renewed his application; on the 25th February the Judge of the Court of Arches, according to the report in Comyns (p. 200), "decreed that letters of request from Dr. Harwood lie not before him, because in a case of heresy the Bishop of the diocese hath jurisdiction in places otherwise exempt within his diocese, and, notwithstanding the statute of Citation, an heretic may be cited to appear before him upon letters of request from the Judge of the Peculiar, or by process *sub mutuo*, etc., and therefore he cannot decree a citation," etc. On the 2d of March, Pelling appealed to the delegates, to which appeal Whiston was no party, but the Judge of the Arches seems to have been heard by counsel, who argued, according to the report, as follows:—"That a superior Judge is not obliged to accept letters of request, for no law saith that he is so obliged, and it would be inconvenient, since the fees would all belong to the inferior Judge, and unreasonable, since the superior Judge cannot oblige the inferior to grant such letters of request, and therefore ought not to be obliged to accept them. *Secondly*, The inferior Judge in this case had no jurisdiction, for he cannot excommunicate, degrade, or deprive." "Statute 2 Hen. IV. c. 15, speaks of the Bishop of the diocese, and so does 10 Hen. VII. c. 17. *Thirdly*, The Bishop of the diocese hath jurisdiction in case of heresy in places exempt. *Fourthly*, There was no cause depending before Dr. Harwood, and the Arches have jurisdiction only in case of appeals by patent"

To this argument it was replied, that the Bishop was by express words of the 23d Hen. VIII. c. 9 (the Bill of Citations), restrained from citing any person dwelling in a Peculiar before him, and that this case was not within the exceptions mentioned in the statute. That there was no appeal from the Commissary of St. Paul's to the Bishop; and, on the other hand, it was provided by sect. 4 of the statute,—“That it shall be lawful to every Archbishop of this realm to cite any person inhabiting in any Bishop's diocese within his province for causes of heresy, if the Bishop, or other Ordinary immediate thereunto consent, or do not his duty in punishment of the same;” and that, on the whole, “the Judge of the Arches, by refusing a citation, not letters of request, denied justice.”

The delegates reversed the sentence of the Arches; but upon what grounds does not appear. Whether because he ought to

have issued an original citation under the 4th section of the Act, or because sufficient grounds were laid by the second letters of request for his acceptance of them (in the present case before me, it will be remembered that no grounds are laid), and he had exercised his discretion improperly in not accepting them; or whether he was bound, without any grounds assigned, to have accepted them, though the latter suggestion, for a reason which I will presently state, seems to have been very improbable.

Whiston always protested against the jurisdiction of the Delegates, upon the ground that he was no party to the appeal, and that they were acting as a court of original jurisdiction, which they had no power to do; and certainly they were acting in a most unusual manner in this respect. It appears that the Delegates did not agree amongst themselves; there was a commission of Adjuncts—they arrived at no conclusion; and it is believed that the whole affair was put an end to on the accession of George I., by a general Act of Amnesty, which included Heresy.

I have considered this case at so much length because it is the only one upon which Sir G. Lee founds his dictum in *Butler v. Dolbin* (2 Lee, 317). Whiston's case was in 1712, and *Butler v. Dolbin* was in 1756.

Dr. Hay, the most eminent civilian of his day, argued in the latter case, "that the statute (23 Hen. VIII. c. 9) authorises the Court to judge of the reasons on which letters of request are granted. This is a new case arising upon the late statute of Marriage; the doubtfulness of the jurisdiction is good ground for receiving the letters of request." And what is more remarkable, Dr. Bettesworth the younger, the son of the Judge of the Arches before whom Whiston's case came, must have been familiar with it; but he argued that "the granting and receiving letters of request are discretionary." The reference of Sir George Lee to the supposed *dictum* of the Delegates in Whiston's case could not have been founded, as the dates show, on personal knowledge, no note or report of any such *dictum* is to be found. The *dictum*, moreover, was unnecessary for the decision in Whiston's case, and was not necessary for the decision in *Butler v. Dolbin*, at which Sir George Lee arrived; which was, that the Arches Court had power of accepting letters of request in a matrimonial suit; and that where it was doubtful in which of two jurisdictions the party had his domicile, the Arches Court might accept joint letters of request. And this seems to have been considered by Sir Herbert Jenner, in the case of *Steward v. Bateman*, decided in 1842 (3 Curt. p. 205), as the only point which was decided by Sir George Lee.



The statute of 23 Hen. VIII. sect. 3, enacts that "the Bishop may make request or instance to the Archbishop, Bishop, or other superior Ordinary or Judge, to take, treat, examine, or determine the matter before him or his substitutes; and that to be done in cases only where the law, civil or canon, do affirm execution of such request or instance of jurisdiction to be lawful or tolerable." This very enactment surely implies a power in the Court of Arches to examine whether the law, civil or canon, does affirm the execution of such request to be lawful. Such, moreover, has been the invariable practice up to the time of passing the 3 and 4 Vict. c. 86, to assign grounds why the letters of request should be accepted. This practice was deemed proper and reasonable by the Courts in Westminster Hall, for in the case of *Jones v. Jones* (reported in Hobart, p. 185, and in 2 Brownlow, p. 27) it having been maintained by the civilians that it was absolutely in the power of the Ordinary to send any cause to the Archbishop at his will without assigning any special reason, for which they cited the authority of divers canonists, Hobart (and as it seems, the Court) said, "That to expound the statute thus, viz.: that the Ordinary may, at his will and pleasure, send the subject from one end of the kingdom to another without cause, was both against the letter of the statute, and did utterly elude it; that the purpose of the law was to provide for the ease of the subject more than for the jurisdiction of the Ordinary; which appears in that there is action given to the subject and penalty to the King for the vexation, but none to the Ordinary; and that this very clause says it is to be done *in cases only*, etc., which would be a vain restriction, if it left it as general as before, *i.e.* if it were lawful or tolerable in all cases without cause." My predecessor in this chair, Sir H. J. Fust, in 1842 decided, in a very elaborate judgment, *Steward v. Bateman* (3 Curteis, 209), to refuse letters of request presented to him jointly by the Archdeacon and the Chancellor of Norwich, observing indeed, "My object is not to withhold the jurisdiction of this Court, but to guard against any question arising in respect to the proper form of exercising it." The decision of Sir George Lee was much referred to by the Council and by the Judge, but I do not find it to have been suggested by either that the accepting letters of request was compulsory on the Court of Arches. I do not mean to assert that the Court of Arches exercises a discretion from which there is no appeal as to accepting or refusing letters of request. There are various instances, such as that of granting or refusing a Faculty, in which the Court exercises its discretion; but the exercise of such discretion may be controlled and modified on an appeal to the superior Court. So far, therefore, as the law

and practice previously to the passing of the present Clergy Discipline Act are concerned, I think the Court of Arches had a right to refuse letters of request until proper grounds were assigned why they should be accepted. Secondly, I have to consider whether the enactments in 3 and 4 Vict. cap. 86, have taken away such discretion as previously existed. Now it is, in the first place, remarkable that this statute has given the Bishop greater personal power than he ever previously possessed, and greater assistance in the exercise of that power. He may hear a cause of this kind sitting in person, with the aid of Assessors, which he could not do previously to the passing of this statute. He may also send the case, by letters of request, to the Court of the Province; but the statute does not enact that the Court of the Province must accept them when sent, or that it may not require reasons why it should accept them. Moreover, it has been ruled in the case of *Regina v. The Bishop of Chichester* (2 Ellis & Ellis, 209), by the authority of Mr. Justice Wightman, Lord Campbell, and Lord Chief-Justice Erle, for Mr. Justice Wightman expressly stated in his Judgment that the two latter Judges concurred with him in opinion, that the Bishop had such a discretion, while the remaining Judge (Mr. Justice Hill) agreed that the Bishop had such a discretion in the particular case which was before the Court. And in the case of *Sherwood v. Ray* (1 Moor. P. C. Rep. 397) the Judicial Committee of the Privy Council, a member of which was Sir John Nicholl, the most experienced of all Ecclesiastical Judges, laid down the law as follows:—"And it is to be recollected that this may be the only form in which any individual can question the marriage as a matter of Right, for to promote the office of Judge in a criminal suit requires the authority and consent of the Court, and, though this is obtained without difficulty in ordinary practice, it cannot be demanded *ex debito justitiæ*."

I have referred to the clause in the statute enabling the Bishop to send the case without inquiry, in the first instance, by letters of request, to the Court of Appeal. Surely it would be a strange thing if a discretion as to allowing a suit to be instituted were vested in the Bishop and denied to the Archbishop represented by his Court. If any good grounds were stated, or if it appeared from the nature of the case that the interests of justice would be promoted by my acceptance of these letters of request, I should certainly exercise my discretion in favour of accepting them. I have done so in cases where clerks have been charged with immorality, because there was a manifest advantage both to the parties and to the Church that a court of law accustomed to the oral examination of witnesses

and to the investigation of evidence, and aided by the assistance of able counsel, should deal in the first instance with such cases. But the present letters of request are tendered to me in a matter of alleged heresy connected with some of the most awful mysteries of our religion. Surely that is a case on which, of all others, the Bishop ought to exercise his jurisdiction. No reason whatever is stated to me why he should not do so. Courts of Appeal are in the habit of saying that they will not entertain grave questions in the first instance, because they have a right to the advantage of the judgment of the inferior Court. This doctrine has been frequently maintained by the Judicial Committee of the Privy Council when attempts have been made to induce them to retain causes appealed to them upon some incidental point. Why should the Court of Appeal of the Province be deprived of this advantage in a matter which, I must repeat, is, of all others, fittest for the cognisance and decision of the Bishop of the diocese?

I must decline to accept these letters of request until some reason at least is stated why I should do so.

SECOND JUDGMENT.—Upon a former occasion when this case came before me, I made the following observations, which I must now repeat:—"This is a case of very great importance to the defendant, and still more to the Church of which he is a minister. The diocesan of the defendant has allowed an individual layman to promote his office, and to act the part of public prosecutor against the defendant for having published certain works alleged to contain statements and positions which contravene the teaching of the Church.

"The defendant has not thought proper to appear in answer to the citation of his Metropolitan: this circumstance would be to be regretted in any case, but it is especially to be regretted in the present, inasmuch as many of the charges against the defendant appear to be that he has adopted and approved the positions of other persons and those divines of very great reputation, upon the subject of his alleged heresy, and these other divines are not and cannot be cited before the Court in this suit to make their defence.

"The contumacy, therefore, of the defendant in refusing to appear to the citation of the Archbishop's Court not only leaves without defence his own statements, but also those of distinguished divines which he has adopted, and moreover places the Court in a position of great difficulty; because while, on the one hand, the defendant ought not to be advantaged by his contumacy; on the other hand, it is the duty of the Court to see that charges of this very serious nature, which must affect

interests far beyond those of the defendant, are properly laid, and that justice be done in a matter of the gravest nature; while in the execution of its duty it is deprived of the ordinary assistance of counsel and obliged to hear argument on one side only.

“According to the usual and convenient practice of this Court, the criminal articles, if in the opinion of the accused party they do not contain the allegation of an offence which, if it was proved, would amount to a breach of ecclesiastical law, are objected to, or demurred to, it being assumed for the purposes of the discussion that the allegations are true; and thus it often happens that the questions of law, that is, whether the charges do show a case of heresy or not, is decided upon when the admissibility of the criminal articles is debated, and thereby delay and expense are avoided. But after some reflection it appears to me that this course cannot be pursued in the present instance, and that, if there be any charges in the articles before me laid which might by any possible construction amount to an ecclesiastical offence, I ought to admit such articles to proof, reserving to myself, after proof has been given of the facts alleged, and after hearing argument on such proof, the consideration of the criminality of the defendant, and, if that criminality be established, of the punishment to be awarded. The proceedings being *in pœnam* in this case, the admissibility of the articles is necessarily moved by counsel in Court, and the attention of the Court is necessarily called to them at this stage; and I must therefore, while reserving as I have said the main question of the hearing, endeavour, though without the assistance of counsel for the defendant, to see that they are in such shape and form as duly to present the charges which it is competent to the prosecutor to lay, and which he hereafter undertakes to prove.

“The articles which contain the criminal charges are laid under the general Ecclesiastical or Canon law, and not under the statute of Elizabeth. The jurisdiction of this Court in the present case is founded not on the general law, which would have devolved the case in due course of appeal from the decision of the Bishop upon it, but on the statute (3 & 4 Vict. cap. 86) of her present Majesty; and according to that statute, the Bishop of the place in which the alleged offence of publishing heretical doctrines was committed by the defendant, issued a Commission; that Commission heard a *prima facie* case for further inquiry, and the return of the Commission was made to the Court of the Bishop of the diocese, in which the defendant held preferment; that Bishop, declining to try the defendant, sent the case by letters of request to this Court, the

acceptance of which the Judicial Committee of the Privy Council has decided to be compulsory upon it. My jurisdiction, therefore, it appears to me, is founded on and limited by the charges laid before the Commissioners, and I have no authority to deal with any charges which were not laid before them.

"It is moreover a clear axiom of the law and practice of this Court that no charges can be laid in criminal articles against the defendant, of which he was not apprised by the citation or decree which summoned him to appear before this Court.

"Applying these observations to the consideration of the articles now before me, I must decide upon their admissibility in their present shape."

I then proceeded to point out various particulars, in which it appeared to me that the articles must, in compliance with these principles, be reformed. Upon Tuesday last the admissibility of these articles was discussed before the Court, and I was informed by the counsel for the promoter, that in consequence of my observations the articles had undergone a partial reformation by striking out all reference to the first edition of one of the works mentioned in the articles, and the Court was requested to permit some other reformation of a trifling character to be made, and this permission was granted. The objections, however, which the Court had suggested to the attention of the counsel, with respect to a portion of the 5th article, namely, that part which begins: "But this was not all. The University, indeed, had," etc. etc., down to the words—"when such by God's mercy may be had;" and also with respect to a portion of the 6th article, beginning—"Then followed, in 1855, your voluminous work," etc. etc., down to the end of that article, and other portions of the articles referring to the same subject as is contained in the aforesaid portion of the 5th article, were not admitted by the counsel to be valid, and it was argued that these portions of the articles were properly laid, and ought not to be struck out. This passage in the 5th article, and the others connected with it, have for their object to charge the defendant with having expressed an opinion in one of his works which contravene the twenty-ninth of the Thirty-nine Articles of Religion, the title of which twenty-ninth Article is—"Of the wicked which eat not the body of Christ in the use of the Lord's Supper." By the other portion of the 5th article of charge, and by the other articles, the defendant is in substance charged with affirming the following doctrines, alleged to be heresies:—

- (1.) The actual presence of our Lord in the Sacrament of the Lord's Supper.

- (2.) The visible presence of our Lord upon the Altar or Table of the Holy Communion.
- (3.) That there is a sacrifice at the time of the celebration of the Eucharist.
- (4.) That adoration or worship is due to the consecrated elements of the Lord's Supper.

The passage, therefore, in the 5th criminal article, which charges the defendant with maintaining the doctrine that—"The wicked eat the body of Christ in the use of the Lord's Supper," contains a charge of a distinct and separate offence, for it is clear that the doctrine of the Real Presence may be holden, and has been holden, by those who deny the reception of the Eucharist by the wicked.

The question which I now have to decide is—whether, in these particular proceedings, it is competent to the prosecutor to lay this charge in addition to those which I have mentioned against the defendant.

The answer to this question must be sought in an examination of the statutes of the third and fourth of her Majesty, of the practice of this Court in criminal cases and of the principles upon which that practice is founded in their application to the present case. It appears to be admitted, or at least I think that it is proved, that the particular charge in question was not preferred before the Commissioners. It is certainly not specifically set forth either in the "letters of request" to me, or in the decree embodying those letters of request which was served upon the defendant, and which is the beginning of this suit (*Ditcher v. Denison*, 11 Moore, P. C. C. 324). Nor is it a charge which can be raised by necessary implication, if that in a criminal suit were sufficient, from the passages recited in the letters of request, and in the decree. It is contended, however, that I am bound to be ignorant of what passed before the Commissioners, and that the selection of passages in the letters of request and decree does not affect the question, inasmuch as they were superfluous; and, indeed, erroneously introduced into these instruments. In a case like the present, where letters of request are sent not before but after the issue and report of a Commission, it seems illogical and impossible wholly to separate the two, because the letters of request are founded upon the report of the Commission. These letters therefore necessarily recite, as in this case, the charge before the Commissioners, and their finding upon it, and the Act directs that the depositions of the witnesses examined before the Commissioners, and their report, should be filed in the Registry of the diocese. Sir Herbert Jenner said, in *Homer v. Jones* (9 Jurist, p. 167, March 1st, 1845),—"It is very certain that he, the Bishop of Worces-

ter, could not take any notice under the statute of this offence, which was committed beyond his jurisdiction. But it is said, that although the Bishop could not, yet that this Court, as possessing jurisdiction throughout the whole Province of Canterbury, might receive the charge. Now, the case is sent here by letters of request, which letters embody the proceedings before the Commissioners, and those proceedings are the very foundation of the case before this Court. I am of opinion that the Commissioners can proceed only within the diocese of the Bishop who issues the commission; and I must presume that they have bounded their inquiries, as they ought to have done, within that limit, and I, therefore, reject this article." In *The Bishop of London v. Bonwell* (6 Jurist, N. S., p. 709, July 21st, 1860), an objection was taken that the Court of Arches could not adjudicate upon charges not reported by the Commissioners, and Dr. Lushington, when the admissibility of the articles was debated, seems to have doubted as to the effect of the Commissioners' report on the proceedings in the articles, but in giving sentence he carefully founded his decree only upon the charges that had been reported by the Commissioners. And when the case was appealed to the Privy Council their Lordships said: "It is unnecessary for their Lordships to pronounce any opinion, whether, in proceedings under the Church Discipline Act, the Court of Arches may entertain and adjudicate upon charges not reported by Commissioners as fit to be inquired into, for the point really does not arise in this case. The authorities cited before their Lordships, and in the Court below, do not appear to be entirely in unison, and many arguments of weight may be urged on either side. If ever a case should come before their Lordships, the facts of which should make a decision necessary, it will be their Lordships' duty to lay down the rule; the facts will then be presented more precisely, and they will have the advantage of hearing the points argued at the bar more fully than has now been done. But assuming the contention of the appellant to be well founded, more than one answer now occurs: "First, the insertion of an objectionable item of charge will not vitiate others well laid, nor can it form any valid ground of objection to the judgment where the Judge has confined himself to the charges which are well laid now; in this case the learned Judge in the Court below, who was evidently quite aware of the nature and weight of the objection, has carefully excluded from the ground of his decree any fact of adultery in London or elsewhere, and has limited himself to the charges to which the objection does not apply."—(14 *Moore's Privy Council Reports*, p. 411.)

In the present case the letters of request informed me at

great length of the charges which were laid before the Commissioners, and the last extract from the defendant's work contains a passage which, I think, must be fairly considered as comprising the alleged heresies for which he is prosecuted. The words are these:—

“The three great doctrines on which the Catholic Church has to take her stand are these:—

“I. The Real Objective Presence of our Blessed Lord in the Eucharist;

“II. The Sacrifice offered by the Priest;

“III. The Adoration due to the presence of our Blessed Lord therein.”

I do not see why it would be more competent to this Court to try a charge not preferred before the Commissioners than it would be for a Bishop who issued the commission if he had heard the cause himself after the finding of the Commissioners. The Act expressly provides that a copy of the depositions taken before the Commissioners is to be filed in the Court and articles to be drawn up, and the whole context seems to show that those articles must be confined to the charges which were laid before the Commissioners. The statute provides also (section 13) that when the case is sent by letters of request to the Court of Appeal of the Province, it is “to be there heard and determined according to the law and practice of such Court.”

Now there is no point of the law and practice of this Court more certain than that the articles cannot contain a charge which is not to be found in the citation. And the decree in this case which is served on the defendant is the citation. This important point of law and practice has been very often laid down: perhaps no stronger instance can be found than that of the decision in *Brecks v. Woolfrey* (1 Curteis, *Eccl. Rep.*, p. 880). It was a question as to the admissibility of the articles in a cause of office, promoted by the Rev. John Brecks, the vicar of the parish of Carisbrooke, in the Isle of Wight, against Mary Woolfrey, widow, “for having unduly and unlawfully erected, or caused to be erected, a certain tombstone in the churchyard of the said parish of Carisbrooke, to the memory of Joseph Woolfrey, late of the said parish, deceased, and a certain inscription to be made thereon, contrary to the Articles, Canons, and Constitutions, or to the doctrine and discipline of the Church of England.” These were the words of the citation.

DR. ADDAMS opposed the admission of the Articles. “The grounds,” he said, “on which the party is proceeded against in the articles are two. First, the erection of a tombstone with-



out leave of the vicar of the parish; and, secondly, placing thereon an inscription contrary to the Articles, Canons, and Constitutions, or to the doctrine and discipline of the Church of England.

"SIR H. JENNER.—Is it stated on the citation that it was done without the leave of the incumbent?

"ADDAMS.—No.

"SIR H. JENNER.—They are separate and distinct offences, but there is no mention in the citation of the leave of the incumbent; the articles ought to agree with the citation.

"DR. ADDAMS.—I am not disposed to take the objection.

"SIR H. JENNER.—But must not the Court take the objection, this being a criminal suit? If it was intended to proceed on the ground that the erection was without leave of the incumbent, it should have been stated in the citation."

And in giving judgment the Court said :—

"The other branch of the case is subject to different considerations, namely, the erection of the stone without the consent of the incumbent, which is an ecclesiastical offence. It has been suggested in the argument that the proceeding on this branch of the case should have been in the civil form, by monition; but it seems to me that this is the proper form of proceeding; I am not aware of any case in which a different form has been followed. But this offence was not specified in the decree or citation served on the party. The only ground of illegality on the face of the citation consisted in the inscription; the erecting, or causing to be erected, a monument, without the leave of the incumbent, is a distinct and separate offence which should have been set forth in the citation, in order that the party cited might know what she was called upon to answer. I am clearly of opinion that, according to the law and practice of the Court, the citation was insufficient to raise the question whether the consent of the incumbent had been obtained or not; and on this part of the case, likewise, I am of opinion that the articles are inadmissible."—(*Ibid.* p. 903.)

It has been argued that the recital in the letters of request, and in the citation or decree of the various passages containing the alleged heresy was superfluous and unnecessary, and that as the work from which these passages were extracted was also referred to in the citation, that Mr. Bennett may be articleed against for any heresy contained in these works, but the statute says that the "law and practice" of this Court is to be adopted. The extracts in question constitute unquestionably, as it appears to me, that which is technically called the *præsertim* of the charge: and that experienced and eminent

Ecclesiastical Judge, Sir John Nicholl, says :—"The *præsertim* is always construed as setting forth the nature of the principal charges; the general words as only including subordinate charges *ejusdam generis*."—(*Bennett v. Bonaker*, 3 Haggard's *Eccl. Rep.*, p. 25.)

In the decree or citation served on Mr. Bennett, he is charged with having published "certain works, in which he, the said James Early Bennett, advisedly maintains or affirms doctrines directly contrary or repugnant to the Articles and Formularies of the United Church of England and Ireland, which works are more particularly specified, set forth, and quoted in the letters of request hereinbefore recited, and so accepted by us as aforesaid."

It could not be denied that by these words the *præsertim* is confined to the extracts, but it was said that this instrument was prepared in the Registry, but not by counsel. I believe that the usual course has been pursued; but it was clearly the duty of the legal advisers of the promoter who extracted the instrument, if they conceived it to have been not properly worded, to have applied for another instrument; at all events, the defendant is entitled to the application of the law upon the instrument which was actually served upon him.

The charge of heresy as to the doctrine of the reception of the Eucharist by the wicked is, as I have already said, a distinct and separate charge. It has been also argued that it has not been usual, in these cases of heresy, that the citation should contain more than a general charge of heresy, leaving the particular nature of the heresy to be afterwards specified in the articles. One and a sufficient answer is, that this is not the course which the promoter has thought proper to pursue in the present case. It was not denied by counsel that, if a particular heresy were specified in the citation, the charge of another heresy would not be admissible in the articles, and in point of fairness and justice to the defendant, it surely can make no difference whether he be charged with passages containing only certain heresies or with a distinct charge of maintaining those certain heresies.

The counsel for the promoter referred me to a judgment of the Court of Queen's Bench, delivered in last Easter Term, from which, as well as from the explanations of counsel, I gather the following not unimportant facts with reference to the present question :—First, it appears that the counsel for the promoter not being satisfied that they could lay the charge of this particular heresy in the present articles, applied to the present Bishop of London for a fresh commission against Mr. Bennett, in order that this very charge might be preferred

against him. The Bishop of London, in the exercise of his episcopal discretion, refused to allow a fresh Commission to issue, whereupon the prosecutor applied to the Court of Queen's Bench for a mandamus against his Lordship; that the Court refused to issue, it is said, because they thought that the charge could be laid in the present articles. Certainly, if the Queen's Bench had expressed any such opinion, I should have attended to it with all the respect and deference due to the opinion of such a tribunal, bearing in mind, nevertheless, that the subject of the pleadings in the Ecclesiastical Court was one with which their Lordships could not be very familiar, and also that they had only heard the argument on one side of the question. But I do not find, from a perusal of the report, that any such conclusion can be fairly drawn. It appears to me that the mandamus was refused: first, because the inclination of the Court was that the Bishop had a legal discretion to exercise in the matter, with which they would not interfere; and I may observe in passing, that if a Bishop has not such a discretion, it is difficult to conceive how the government of any diocese can be properly carried on: secondly, on the ground that by the present proceedings, the heterodoxy of the accused, with respect to the general subject-matter of the Eucharist, was sufficiently raised.

On the grounds, therefore, that this particular charge of heresy was not preferred before the Commissioners, on whose report the subsequent proceedings are founded, and that it was not mentioned in the letters of request or in the decree or citation, I should, having regard to the law and practice of this Court and the authorities to which I have adverted, be of opinion that the articles must be reformed by striking out the portions which relate to it.

Assuming, however, for the sake of argument, that these objections do not apply to the present case, there remains one of even a graver character to be stated. This is a highly penal proceeding against the defendant. It is a criminal suit for the promulgation of heresy.

The particular charge is not on account of a heresy distinctly stated or uttered in any sermon, or public act of preaching or statement connected with the discharge of his duties as incumbent of the parish committed to his charge. It is a heresy alleged to be contained in an essay or review upon the ecclesiastical events in the Church since the year 1833. It is to be extracted from what purports to be an historical statement of a trial against another clergyman as long ago as the year 1856. The author narrates that Archdeacon Denison was condemned by the then Archbishop of Canterbury for teaching the doc-

trine of the Real Presence (not a quite accurate statement, I may observe in passing), that the sentence was reversed, that a protest against the Archbishop's sentence was signed by seventeen priests; of these the defendant is said to be one. It is contended that by this reference to the protest, which is in a work not mentioned in the citation, the defendant has made himself responsible in this suit, be it observed, for what is contained in that protest.

The passage in the extract from the book, which book is before the Court, to which I was referred as making him responsible, is as follows:—

“After this nothing further was heard of the silly trial of *Ditcher v. Denison*. It died a natural death. But what became of the doctrine? From 1853, when it passed the judgment of the Heads of Houses in Oxford, to 1867, when at length no one is inclined to resist it, it has grown and multiplied with wonderful rapidity, according to the saying, ‘*Magna est veritas et prævalebit.*’” When the context of the passage is examined, it clearly appears that the writer is speaking, however inaccurately, not of the alleged specific heresy of “The reception of the Eucharist by the wicked and the contravention of the Twenty-ninth Article of Religion,” but of the general doctrine of the Real Presence. The alleged heresy of maintaining that doctrine is charged in the articles, and the prosecutor will have the opportunity of contending that Mr. Bennett is punishable for maintaining it. To make the defendant chargeable with a particular heresy, on which, in the work which is before the Court, he is not commenting, simply because that heresy is to be found in a work referred to by him, which work is not before the Court, would be, I think, to establish a doctrine of constructive heresy in a criminal suit, unknown, I think, to ecclesiastical jurisprudence since the abolition of the Star-Chamber and the High Commission Court, which would be at variance with the spirit, if not the letter, of the decisions given in the Judicial Committee of the Privy Council and in this Court in suits of this character.

After much consideration I have arrived at the conviction, from the reasons which I have stated, that the articles must be further reformed by striking out all that relates to the charge of contravening the Twenty-ninth Article of Religion as to the reception of the Eucharist by the wicked, and I direct them to be reformed accordingly.

The articles so reformed will, as I have already said, but for the sake of clearness will now repeat, still contain the charges for alleged heresies:—

- (1.) The actual presence of our Lord in the Sacrament of the Lord's Supper.
- (2.) The visible presence of our Lord upon the Altar or Table of the Holy Communion.
- (3.) That there is a sacrifice at the time of the celebration of the Eucharist.
- (4.) That adoration or worship is due to the Consecrated elements of the Lord's Supper.

THIRD JUDGMENT.—This is a criminal suit in which the office of the Judge is promoted in this Court by virtue of letters of request from the late Bishop of Bath and Wells. The promoter of the office is Mr. Sheppard, a parishioner of Frome Selwood; the defendant is the Reverend William James Early Bennett, vicar of that parish. The defendant has not appeared, and the proceedings are therefore carried on *in pœnam*.

The admission of the articles was moved before me on the 26th of October 1869, and on the 30th of that month I directed the articles "to be reformed, by omitting all such parts thereof as charge the respondent with contravening the Twenty-ninth Article of Religion entitled, 'Of the Wicked which eat not the Body of Christ in the use of the Lord's Supper.'"

From this an appeal was prosecuted, by permission of the Court, to the Judicial Committee of the Privy Council, who, on the 26th of March 1870, affirmed the judgment of this Court; and on the 8th of April the cause was by order in Council duly remitted to me. No further steps, however, were taken in the prosecution of the suit until the 3d of June; nor was the remission filed until shortly before that time, after I had thought it my duty to call attention in open Court to the delay, it being the established practice of the Court to dismiss a suit when not conducted with all reasonable expedition.

I have been informed that the delay was occasioned by an unsuccessful application to the present Bishop of Bath and Wells, for further letters of request, in order to warrant a fresh charge against the defendant. I am of opinion, however, that the instrument of remission ought to have been filed immediately on execution; and for the future I shall expect that this course be taken.

### *Nature of the Charge.*

The defendant is charged with the maintenance and promulgation of certain heresies alleged to be contained in an essay entitled, "Some Results of the Tractarian Movement of 1833"

contained in a book entitled *The Church and the World*; and also in the second and third editions of a pamphlet entitled, "A Plea for Toleration in the Church of England, in a Letter to the Rev. E. B. Pusey, D.D., Regius Professor of Hebrew and Canon of Ch. Ch. Oxford." The formal evidence respecting the position of Mr. Bennett as a beneficed clerk in Holy Orders, and that which was requisite to establish the authorship and publication of the works in question, has been duly given in this Court.

The criminal articles charge the defendant with having promulgated certain doctrines respecting the Holy Communion which may be classed under the following categories:—(1) Opinions with respect to the presence of our Lord in the blessed Sacrament; (2) Opinions with respect to a sacrifice said to be offered in the administration of that Sacrament; (3) Opinions with respect to the adoration of the consecrated elements and of our Lord in that Sacrament. It is alleged in the criminal articles that Mr. Bennett has promulgated opinions upon all these subjects which are heretical, and which contravene the formularies of our Church.

In two former judgments I have stated that, in order fully to understand and duly to construe these formularies, one fundamental truth must be borne in mind: namely, that the end and object of our Church was to reform her doctrine and ritual so as to bring them into general harmony with those of the Primitive Catholic Undivided Church.

This truth is indeed elementary to all who have studied the ecclesiastical history of England, and examined the legal foundations upon which the Church was established in these realms; nevertheless, it is a truth to which in former litigation perhaps I may be permitted to say due prominence has scarcely been given, or which has been occasionally lost sight of in the multiplicity of facts and details which surround the gradual progress of that epoch which is somewhat vaguely called the Reformation in this kingdom.

It was, perhaps, never more clearly stated than in the quaint but vigorous language of the very learned Donne, when, preaching on the observance of Trinity Sunday, he said, "which day, our Church, according to that peaceful wisdom, wherewithal the God of peace, of unity, and concord had inspired her, did in the Reformation retain and continue, out of her general religious tenderness, and holy loathness to innovate anything in those matters which might be safely and without superstition continued and entertained. For our Church, in the Reformation, proposed not that for her end, how she might go from Rome, but how she might come to the

truth ; nor to cast away all such things as Rome had depraved, but to purge away those depravations, and conserve the things themselves, so restored to their first good use.”<sup>1</sup>

I have again drawn attention to this legal and historical fact, because on no subject, perhaps, has it a more important bearing than on the subject of the due construction of those parts of our formularies which relate to the Holy Sacraments.

### *Historical Notice of the Formularies.*

Some historical notice of these formularies in their relation to the Sacraments naturally precedes a consideration of their true meaning and construction.

Early in the year 1530, the first confession of the Saxon Reformers was presented at the Diet in Augsburg to the Emperor Charles v. This document, known as the “Confession of Augsburg,” appears to have influenced the first formularies of faith drawn up in England after the rejection of the Papal Supremacy by Convocation in 1534. The 13th Article of the Confession, “*De usu Sacramentorum*,” teaches that sacraments are not only badges (*notæ*) of our Christian calling, but rather signs and testimonies of God’s will towards us, ordained for the purpose of exciting and confirming faith. It also condemns those who maintained that sacraments justify *ex opere operato*, and neglected to teach that faith is required to the profitable use of sacraments.<sup>2</sup> The 10th Article, “*De cœna Domini*,” declares that the Body and Blood of Christ are truly present<sup>3</sup> (*vere adsint*), and are distributed to the recipients. It also censures those who maintained a contrary tenet.<sup>4</sup>

Meanwhile the Church of England had her full share of the religious trouble which distracted the rest of Christendom, and during which “the favourers of the old and the new learning,” according to a phrase current at the time, arranged themselves, the former under the leadership of Gardiner, Bishop of Winchester, and the latter under Cranmer and Ridley ; and there sprang up a variety of sects, among which the Anabaptists were conspicuous, threatening the destruction of the Church. In 1536 appeared the ten English Articles of Religion, which were probably composed by a committee of divines, over whom Henry VIII. either personally, or by means of his Vicar-

<sup>1</sup> *Donne’s Works*, vol. ii. ser. xlii. p. 248.

<sup>2</sup> *Hardwick’s History of the Articles*, p. 28.

<sup>3</sup> Wahrhaftiglich unter Gestalt des Brots und Weins im Abendmahl gegenwärtig sey.

<sup>4</sup> *Hardwick’s History of the Articles*, p. 27.

General, presided. The 4th Article was entitled the "Sacrament of the Altar," and set forth that "under the form and figure of bread and wine, which we there presently do see and perceive by outward senses, is substantially and really comprehended the very self-same Body and Blood of our Saviour, which was born of the Virgin Mary, and suffered upon the Cross for our Redemption;" that "the very self-same Body and Blood of Christ, under the same form of bread and wine, is corporally, really, and in very substance, exhibited, distributed, and received unto and of all them which receive the said Sacrament; and that as a consequence the Sacrament is to be used with all due reverence and honour, and after careful self-examination."<sup>1</sup>

It is very doubtful whether these Articles were ever sanctioned by Convocation; their direct influence, whatever it was, appears to have been destroyed by the promulgation of another Formulary of Faith, entitled, "The Institution of a Christian Man," which was published in the following year, 1536, upon which<sup>2</sup> these Articles were to a great extent engrafted. It was called the Bishops' Book, and the influence of Cranmer and Ridley prevailed when it was compiled. It contained, among other things, an exposition of the seven Sacraments, and an article on "the Sacrament of the Altar" which taught that under the form and figure of bread and wine *verily, substantially, and really* was contained the very self-same body of our Saviour Christ which had been born and crucified; and that "the very self-same Body and Blood of Christ is corporally, really, and in the very same substance exhibited, distributed, and received of all them which receive the Sacrament."

In 1543, the next Formulary, entitled "The Necessary Doctrine and Erudition of a Christian Man," or "the King's Book," was published. It appears to have been approved by Convocation.<sup>3</sup> It may be observed that the account given by Burnett on this point, as indeed on many others, is loose and inaccurate.<sup>4</sup>

This work was in great measure a revised edition of the Bishops' Book; but of it Collier not unjustly observes, "it seems mostly to lose ground and reform backwards;"<sup>5</sup> in fact the influence of Gardiner caused the restoration in this work

<sup>1</sup> *Hardwick's History of the Articles*, p. 54.

<sup>2</sup> *Ibid.* p. 59.

<sup>3</sup> *Jenkyns' Cranmer*, i. 37; i. 188, 189 (note); *Hardwick on the Articles*, p. 59 (note).

<sup>4</sup> Archbishop Laurence, *Bampton Lectures*, p. 15, note 4 (3d ed.)

<sup>5</sup> *Eccl. Hist.* vol. v. book iii. p. 105 (ed. 1840.)



of some exclusively Roman doctrines which had been omitted in the Bishops' Book.

In the meanwhile, however, it appears that with a view to effect an agreement between the Augsburg Reformers and the Church of England, thirteen Articles were compiled in 1538, under the influence of Cranmer. They never obtained any legal status, but it seems certain that they had great influence on the present Articles, if indeed they were not their groundwork.<sup>1</sup>

After this time Henry VIII. carried on some negotiations with the German Reformers, as to adopting in a greater or less degree the tenets of the Council of Augsburg. But various circumstances gave Bishop Gardiner an ascendancy over Henry, to which we owe "the bloody statute of the Six Articles," which was enacted by Convocation and Parliament in 1539 (31 Hen. VIII. c. 14), and by which the belief in the doctrine of Transubstantiation was enforced. This Act was repealed by 1 Edw. VI. c. 12, in 1547.

On the accession of Edward VI. in 1547, Cranmer's influence was very great, and entirely prevailed over that of Gardiner and his colleagues. In that year, it is not unimportant to observe, the First Book of Homilies was put forth under the auspices of Cranmer.

In 1548 the King appointed Cranmer and other divines "to draw an Order of Divine Worship, having respect to the pure religion of Christ taught in the Gospel, and to the practice of the Primitive Church."

The result was our First Prayer-Book of 1548. The Act was passed early in 1549.

In 1548, Cranmer put forth on his own authority a Catechism translated from the original of Justus Jonas. It was of a decidedly Lutheran character.<sup>2</sup>

In 1552, the Second Prayer-Book was published.

In the same year appeared the Forty-two Articles of Religion; and Cranmer in this compilation made great use of the Augsburg Confession.

The "Necessary Doctrine of a Christian Man," except in so far as it was modified by the Prayer-Book, and perhaps by the Homilies, was still the standard of belief until the promulgation of the Forty-two Articles. They were promulgated under the authority of the Crown in Latin and English in 1553; they were said to have been "agreed on by the Bishops and other learned and godly men." It is doubtful whether they ever

<sup>1</sup> *Hardwick on the Articles*, p. 69.

<sup>2</sup> Archbishop Laurence, *Bampton Lectures*, pp. 16, 17 (note).

received the sanction of Convocation; they were not enacted by Parliament.

Cranmer and Ridley were the chief compilers of the Prayer-Book and of these Articles.

In the compilation of the latter it is probable that Cranmer had the greater share.

The subject of the Holy Eucharist presented the greatest difficulty to the compilers of our formularies. Whether regard was had to the expediency of uniting Reformed Churches abroad, or members of the Church at home, Cranmer's opinion on this subject inclined to that of Luther, but his erudition was chiefly if not entirely derived from Ridley.<sup>1</sup> From what source this Prelate derived his opinion is therefore a matter of great moment, to be hereafter considered. In this place I will only notice that there is a not unimportant difference between the Article as to the Lord's Supper in this compilation, and the Article on that subject in the compilations of 1562 and 1571.

Queen Elizabeth succeeded to the throne in 1558, and the master-mind which presided over the next compilation of the Articles was that of Archbishop Parker. The Second Prayer-Book of Edward VI. was restored with certain alterations; but, though Parker was from the first anxious to recast the Articles of Religion, it was not till the year 1562 that they were discussed by Convocation, and having been adopted by it, were ratified by the Crown in 1563. No subscription, however, was required to the Articles till the year 1571, when it was enforced both by a Canon of Convocation and an Act of the Legislature.

It is to be observed with respect to the Articles of 1563, that the Latin copy, which was legally binding upon the clergy, did not contain the 29th Article, as to the Reception of the Eucharist by the Wicked. This 29th Article does, however, appear in the authorised version of the Articles of 1571, though there is reason to doubt whether it ever was comprised "in the book imprinted," to which in the most singular manner the statute of 13 Eliz. c. 12 alone refers as an authority for the Articles.

The Second Book of the Homilies was first published in the year 1562.

The first part of the Catechism was a portion of Edward VI.'s First Prayer-Book; but the latter part, which relates to the holy Sacraments, was added by the authority of James I., after the Hampton Court Conference, and was probably written by Bishop Overall, then Dean of St. Paul's; to it the present Act of Uniformity, 13 and 14 Car. II. c. 4, gives the force of a statute.

<sup>1</sup> *Hook's Lives of the Archbishops of Canterbury*, vol. ii. N. S. pp. 365, 366.

When the last and present Prayer-Book was enacted by the statute of Charles II., some alterations were made in the service of the Holy Communion which will require notice hereafter, but the Articles, Catechism, and Canons underwent no change.

*Historical Notice of the Doctrine of the Holy Eucharist.*

To this brief historical and legal sketch of the Formularies of our Church in their relation to her doctrine of the Holy Eucharist, I will add a few words as to the position which this doctrine occupied before and during the time when these various Formularies were put forth.

For more than eight hundred years "no curious and intricate speculations," to use Hooker's weighty language,<sup>1</sup> hindered or abated the faith of Christendom in the words of the Divine Founder of this Holy Sacrament. The command "Take, eat, this is my body; drink ye all of this, this is my blood," was obeyed with holy reverence, present joy, and uninquiring faith. The whole undivided Church believed in the great mystery of a presence of our Lord in the Eucharist.

The language of the Fathers on this subject indeed was often ardent, mystical, and rhetorical, adapted to persuade and to induce practice rather than to convince by accurate reasoning or strict logic; and in their writings, both the supporters of a carnal Presence in the elements and of the doctrine of no Presence have sought in later times for a confirmation of their respective tenets. But these writings, it must be remembered, were the works of men who wrote without the necessity for accurate precision of language, which an existing controversy on the subject written about imposes on the writer, for no controversy then existed as to the mode in which Christ was present in this Sacrament, though it may be observed in passing that distinct statements of a spiritual Presence in the elements are to be found in these writings.<sup>2</sup>

In the middle of the ninth century, Paschasius Radbert, Abbot of the monastery of New Corbey, in Saxony, wrote a treatise in which he maintained, or was supposed to maintain, that after consecration the very Body and Blood, the same Flesh in which Christ was born and in which he died, was physically substituted for the Bread and Wine, which, however, still appeared to remain. The doctrine was immediately protested against; the principal opponent had been a monk of the monastery of Old Corbey, and then presided over a monastery in Amiens, by name Ratramn (sometimes erroneously called Ber-

<sup>1</sup> *E. P. Book v. vol. ii. p. 3* (ed. 1825).

<sup>2</sup> Bishop of Ely on the Articles, pp. 679, 680.

tram). Ratramn; at the request of Charles the Bald, examined the book of Paschasius, and answered it, maintaining that the true doctrine of the Church was a real spiritual Presence of Christ under the covering or veil (*sub tegumento, velamine, specie*) of the elements. This work became, from subsequent events, of great importance to the whole Church, and especially to the Church of England.

About the year 970, Ælfric, Abbot of Malmesbury, wrote a sermon of the Paschal Lamb and of the Sacramental Body and Blood of Christ, and a letter to Wulfstone, Archbishop of York, in both of which he maintained the doctrine of Ratramn, and in the former of which he reproduced the argument and some of the principal passages of Ratramn, "*pœne ad verbum*," as the learned Cave says.

From circumstances too numerous to be here stated, the new doctrine of Paschasius was upholden at Rome, and after many struggles and much persecution was finally embodied in the Fourth Latin Council of Lateran (A.D. 1215), by the new name, coined, as the great Canonist Suarez admits, for the purpose, of "transubstantiatio."

But in the fifteenth century, and at the time of the Reformation, this doctrine was again submitted to severe scrutiny; and, as has so often happened, the arbitrary and violent conduct of Rome in attempting to force upon the consciences of men an exclusive, uncatholic, and unjustifiable definition of a holy mystery, produced every kind of variety of opinions and speculation respecting it. The Greek Church has wisely refrained from such an attempt.<sup>1</sup> Cranmer, or at least Ridley, and afterwards Parker, endeavoured to steer a safe course, looking to the beacon of Catholic and Primitive teaching as their guide. The Roman system generated that state of things which Durandus not inaptly describes,—

"Corpore de Christi lis est, de sanguine lis est,  
Deque modo lis est, non habitura modum."<sup>2</sup>

Germany and Switzerland teemed with differences of opinion on this subject.

The subtler doctors of Rome have sought to maintain transubstantiation by the averment that though the *property* of the elements was changed, the *accidents* of colour, shape, taste, etc., remained the same. Luther taught, or was supposed to teach, that the elements and the actual body were blended together; and his teaching has been designated, improperly, according to

<sup>1</sup> See *Palmer's Treatise on the Church*, vol. i. p. 172 (ed. 1842).

<sup>2</sup> Cited by Bishop Forbes in his *Considerationes Modestæ*, p. 380.

high authority, by the term "consubstantiation" or "impanation." Zwinglius taught that the Eucharist was a bare commemoration of the Death of Christ, and the Bread and Wine merely tokens to remind us of his death.<sup>1</sup>

It is probable that during the reign of Henry VIII., Cranmer had not ceased to believe in transubstantiation, though it is difficult to be at all certain upon this point. But with respect to Ridley, it is certain, not only that Ratramn "first pulled him by the ear,"<sup>2</sup> to borrow Ridley's expression, but that he derived from the work of Ratramn (which appears to have been first printed at Geneva in 1532, and which he first became acquainted with in 1545) those opinions upon the Presence which he ever afterwards maintained, and which he endeavoured, as it should seem successfully, to instil into Cranmer.<sup>3</sup>

It is perhaps even more remarkable that in the reign of Elizabeth the Anglo-Saxon Homily of Ælfric was printed by order of Archbishop Parker, who, as will presently be seen, subscribed it in company with his Suffragans, as containing both the ancient and present teaching of the Church on the Presence. There are, indeed, two exceptions of passages mani-

<sup>1</sup> The following verses are taken from *Beaumont's Psyche, or Love's Mystery*, the intercourse between Christ and the Soul, 1642. He was Regius Professor of Divinity at Cambridge for twenty-nine years:—

"104.

"Needs will they peep into the manner how  
This hidden miracle to pass was brought,  
And madly, being not content to know  
What Christ thought fit to teach them, study out  
They know not what, and make this banquet prove  
A Sacrament of war, and not of love.

"105.

"Some press too near, and spy what is not there,  
Some carelessly take what is there away,  
Some will confess no miracle, for fear  
That consequent be ushered in, which they  
Resolve to stop, or that their faith should be,  
Forced to confess more than their eyes can see.

"107.

"Some sift existence, substance, accidents,  
Concomitance, through logick's busy sieve:  
*Trans, sub, and con*, by strange experiments  
They bould so long, that they themselves deceive:  
For whilst to win the precious flour they strain,  
The coarse and refuse bran is all they gain."

<sup>2</sup> *Works*, p. 206.

<sup>3</sup> 3 *Jenkyn's Cranmer*, p. 143; *Hampden's Bampton Lectures*; 2 *Robertson's Christian Church*, p. 288 (note); Bishop of Ely on Articles, pp. 704-5; *Ridley's Life*, pp. 166, 169.

festly stuffed in or "infarced," as the expression is, as a pious fraud by some believer in transubstantiation, but which were no part of the original Homily.

Upon the whole it will appear, I think, from an examination of the Formularies, and from the language of the authorities which I am about to cite, that they were intended to set forth, and do set forth, the doctrine of a real spiritual Presence in the Holy Eucharist. It may be said with truth that on some Formularies this doctrine is more doubtfully or more faintly impressed than on others; but the result which I have stated is not only the legal inference from the construction of all the Formularies, but also especially from those which are in their nature the most important and, as a matter of history, the latest in date.<sup>1</sup> Though, indeed, that there is a change in the Holy Elements after consecration, and that they then convey in a Divine ineffable way the Body and Blood of Christ, seem necessary inferences from the language of the Communion service alone.

When I come to examine the specific charges against the defendant, it will be my duty to consider whether the Church has defined in any way the mode of this Presence, and if so, whether she has defined it by an affirmative dogma, or whether she has contented herself with a declaration against particular modes, and, with the exception of those so declared against, left an entire liberty to her children upon this subject.

*Principles of Judicial Construction applicable to Cases like the present.*

The general position that the Formularies of the Church do allow within certain limits a liberty of private opinion has been laid down by the Ecclesiastical Courts and by the Judicial Committee of the Privy Council. And I think it will be convenient to cite in this place the exact language which in various cases has been applied by these tribunals to this subject.

In the first reported case, that of *H. M. Procurator-General v. Stone*, Lord Stowell, sitting in the Consistory of London, said:—

"I think myself bound at the same time to declare that it is not the duty nor inclination of this Court to be minute and rigid in applying proceedings of this nature; and that if any Article is really a subject of dubious interpretation, it would be highly improper that this Court should fix on one meaning, and prosecute all those who hold a contrary opinion regarding its interpretation. It is a very different thing where the

<sup>1</sup> Bishop of Ely on the Articles, 678.

authority of the Articles is totally eluded, and the party deliberately declares the intention of teaching doctrines contrary to them.”<sup>1</sup>

And in the case of Mr. Gorham, the Judicial Committee of the Privy Council said :—

“There are other points of doctrine respecting the Sacrament of Baptism which we are of opinion are, by the Rubrics and Formularies (as well as the Articles), capable of being honestly understood in different senses ; and consequently we think that, as to them, the points which were left undetermined by the Articles are not decided by the Rubrics and Formularies, and that upon these points all ministers of the Church, having duly made the subscriptions required by law (and taking Holy Scripture for their guide), are at liberty honestly to exercise their private judgment without offence or censure.

“Upright and conscientious men cannot in all respects agree upon subjects so difficult ; and it must be carefully borne in mind that the question, and the only question for us to decide, is, whether Mr. Gorham’s doctrine is contrary or repugnant to the doctrine of the Church of England as by law established. Mr. Gorham’s doctrine may be contrary to the opinions entertained by many learned and pious persons, contrary to the opinion which such persons have, by their own particular studies, deduced from Holy Scripture, contrary to the opinion which they have deduced from the usages and doctrines of the Primitive Church, or contrary to the opinion which they have deduced from uncertain and ambiguous expressions in the Formularies ; still, if the doctrine of Mr. Gorham is not contrary or repugnant to the doctrine of the Church of England as by law established, it cannot afford a legal ground for refusing him institution to the living to which he has been lawfully presented.”<sup>2</sup>

“In the examination of this case, we have not relied upon the doctrinal opinions of any of the eminent writers, by whose piety, learning, and ability the Church of England has been distinguished ; but it appears that opinions, which we cannot in any important particular distinguish from those entertained by Mr. Gorham, have been propounded and maintained, without censure or reproach, by many eminent and illustrious prelates and divines who have adorned the Church from the time when the Articles were first established. We do not affirm that the doctrines and opinions of Jewel, Hooker, Usher, Jeremy Taylor, Whitgift, Pearson, Carlton, Prideaux, and many others, can be received as evidence of the doctrine of the Church of England,

<sup>1</sup> *H. M. Proctor v. Stone*, 1 Consist. Rep., p. 428.

<sup>2</sup> *Gorham v. Bishop of Exeter*, The Gorham Case, by E. F. Moore, p. 471.

but their conduct, unblamed and unquestioned as it was, proves, at least, the liberty which has been allowed of maintaining such doctrine.<sup>1</sup>

"We express no opinion on the theological accuracy of these opinions or any of them. The writers whom we have cited are not always consistent with themselves, nor are the reasons upon which they found their positions always valid; and other writers of great eminence, and worthy of great respect, have expressed very different opinions. But the mere fact that such opinions have been propounded and maintained by persons so eminent, and so much respected, as well as by very many others, appears to us sufficiently to prove that the liberty which was left by the Articles and Formularies has been actually enjoyed and exercised by the members and ministers of the Church of England."<sup>2</sup>

And in the case of *Burder v. Heath*, Dr. Lushington, who had been one of the Lords of the Privy Council in the Gorham case, sitting as Judge of the Court of Arches, observed:—

"And I apprehend that the course to be followed is, first, to endeavour to ascertain the plain grammatical sense of the Article of Religion said to be contravened, and if that Article admit of several meanings, without any violation of the ordinary rules of construction or the plain grammatical sense, then I conceive that the Court ought to hold that any such opinion might be lawfully avowed and maintained.

"If, indeed, any controversy arise whether any given meaning is within the plain grammatical construction, the Court must form the best judgment it can, with this assistance, as I have already said, that if the doctrine in question has been held without offence by eminent divines of the Church, then, though perhaps difficult to be reconciled with the plain meaning of the Articles of Religion, still a Judge in my position ought not to impute blame to those who hold it. That which has been allowed or tolerated in the Church ought not to be questioned by this Court."<sup>3</sup>

And again the same learned Judge says:—

"Before concluding, I think it right to explain why I do not advert to the many authorities which the zeal and learning of counsel have produced. My reason is this, that, in my judgment, not one of these authorities does that which was required in this case—namely, show that some divine of eminence has held, without reproach from Ecclesiastical authority, doctrines in substance the same as those Mr. Heath has promulgated; whatever opinions may have been held in the vast

<sup>1</sup> *Gorham v. Bishop of Exeter*, The Gorham Case, by E. F. Moore, p. 472.

<sup>2</sup> *Ibid.* p. 474.

<sup>3</sup> *Burder v. Heath*, 15 Moore, P. C. Rep. p. 45.



field of polemical divinity, I find none which support Mr. Heath or justify him. In the Gorham case the Judicial Committee had the advantage of being able to quote, in support of their judgment, and in justification of Mr. Gorham, passages from the writings of divines of the highest authority."<sup>1</sup>

And again:—

"No explanation has been offered which in any way shows that Mr. Heath's opinions can be reconciled with the Articles, nor has any eminent divine been shown to have shared his views. Mr. Heath therefore must be condemned by the Articles imposed by law, and which the law alone can change."<sup>2</sup>

In the recent cases, commonly called the case of Essays and Reviews, Lord Westbury, delivering the judgment of the Privy Council, said:—

"Our province is, on the one hand, to ascertain the true construction of those Articles of Religion and Formularies referred to in each charge, according to the legal rules for the interpretation of statutes and written instruments; and, on the other hand, to ascertain the plain grammatical meaning of the passages which are charged as being contrary to or inconsistent with the doctrine of the Church, ascertained in the manner we have described.

"It is obvious that there may be matters of doctrine on which the Church has not given any definite rule or standard of faith or opinion; there may be matters of religious belief on which the requisition of the Church may be less than Scripture may seem to warrant; there may be very many matters of religious speculation and inquiry on which the Church may have refrained from pronouncing any opinion at all. On matters on which the Church have prescribed no rule, there is so far freedom of opinion that they may be discussed without penal consequences. Nor in a proceeding like the present are we at liberty to ascribe to the Church any rule or teaching which we do not find expressly and distinctly stated, or which is not plainly involved in or to be collected from that which is written."<sup>3</sup>

And again his Lordship said:—

"There remain the Communion service and the *Athanasian* Creed. The material passage in the Communion service is in these words:—'O terrible voice of the most just judgment which shall be pronounced upon them, when it shall be said

<sup>1</sup> *Burder v. Heath*, 15 Moore, P. C. Rep. p. 64.

<sup>2</sup> *Burder v. Heath*, Brodrick and Fremantle, P. C. Judgments, p. 229.

<sup>3</sup> *Williams v. The Bishop of Salisbury*, and *Wilson v. Fendall*, 2 Moore's P. C. Rep. (N. S.) p. 425.

unto them, Go, ye cursed, into the fire everlasting which is prepared for the Devil and his Angels.' In like manner the *Athanasian* Creed declares that they that have done evil shall go into everlasting fire. Of the meaning of these words 'everlasting fire,' no interpretation is given in the Formularies which are referred to in the charge. Mr. Wilson has urged in his defence that the word 'everlasting' in the English translation of the New Testament, and of the Creed of *St. Athanasius*, must be subjected to the same limited interpretation which some learned men have given to the original words which are translated by the English word 'everlasting,' and he has also appealed to the liberty of opinion which has always existed without restraint among very eminent English divines upon this subject."<sup>1</sup>

And again:—

"We are not required, or at liberty, to express any opinion upon the mysterious question of the eternity of final punishment, further than to say that we do not find in the Formularies, to which this Article refers, any such distinct declaration of our Church upon the subject, as to require us to condemn as penal the expression of hope by a clergyman that even the ultimate pardon of the wicked, who are condemned in the day of judgment, may be consistent with the will of Almighty God."<sup>2</sup>

*Special Charges.*—1. *Visible Presence of our Lord in the Holy Eucharist.*

The charge against the defendant which I purpose first to consider, is contained in the 15th and 16th articles, and is founded on a passage in the second edition of his work, entitled *A Plea for Toleration*, etc. In that work he speaks "of the visible presence of our Lord upon the altars of our churches."

I have read these words with much surprise and sorrow.

If a private clergyman of the Church of England, holding no position which renders it in any way incumbent upon him to publish his opinions to the world at all, nevertheless steps out of the ordinary course of his parochial duty to discharge the office of a public writer upon the most awful mystery of our holy religion, the least that our Church has a right to expect from him is the knowledge and erudition of a theologian, and the use of the most careful and well-considered language.

The great divines of our Church, feeling and knowing the mode of Christ's presence to be a mystery which is rather to be adored in the silence of the heart than made the subject of con-

<sup>1</sup> *Williams v. The Bishop of Salisbury*, and *Wilson v. Fendall*, 2 Moore's P. C. Rep. (N. S.) p. 432.

<sup>2</sup> *Ibid.* p. 433.

troversy, have, as it were, feared to tread when they approached the precincts of it; and being well versed both in history and theology, knowing therefore how much hasty, ill-chosen, inadequate, and presumptuous expressions upon this subject have contributed to the schisms of Christendom, and fearful of leading others astray, have been silent, or, if it were necessary to speak, studiously guarded and reverently careful in their language.

"All things considered," says Hooker, "and compared with that success which truth hath hitherto had by so bitter conflicts with errors in that point, shall I wish that men would more give themselves to meditate with silence what we have by the Sacrament, and less to dispute of the manner how? If any man suppose that this were too great stupidity and dulness, let us see whether the Apostles of our Lord themselves have not done the like. It appeareth by many examples that they of their own disposition were very scrupulous and inquisitive, yea, in other cases of less importance and less difficulty, always apt to move questions. How cometh it to pass that so few words of so high a mystery being uttered, they receive with gladness the gift of Christ, and make no show of doubt or scruple."<sup>1</sup>

"Where God himself doth speak those things, which either for height and sublimity of matter, or else for secrecy of performance, we are not able to reach unto, as we may be ignorant without danger, so it can be no disgrace to confess we are ignorant. Such as love piety will as much as in them lieth know all things that God commandeth, but especially the duties of service which they owe to God. As for his dark and hidden works, they prefer, as becometh them in such cases, simplicity of faith before that knowledge, which curiously sifting what it should adore, and disputing too boldly of that which the wit of man cannot search, chilleth for the most part all warmth of zeal, and bringeth soundness of belief many times into great hazard."<sup>2</sup>

Of the impropriety of his language the defendant seems to have been made aware; but, unfortunately, not until he had committed the very rash act of publishing it to the world. I have no hesitation in pronouncing that the expression "visible presence of our Lord upon the altars of our churches" is in its plain meaning at variance with all the Formularies of our Church upon the subject, at variance with the language of the service of the Holy Communion, of the 28th Article, and of the Catechism.

The doctrine which it expresses, to use the language of our

<sup>1</sup> *E. P.* Book v. vol. ii. p. 2.

<sup>2</sup> *Ibid.* p. 12.

Articles, "overthroweth the nature of a sacrament," even more than transubstantiation.

I may add, also, that whatever figurative language may be found in the sermons of Eastern Fathers before controversy arose on the subject, I have not been able to find that such a doctrine has ever been maintained in the dogmatic teaching of our own or of any other branch of the Church.

I will consider presently the legal effect of the substitution in a later edition of other language than that which I have here to condemn.

## *2. Other Modes of the Presence in the Holy Eucharist.*

I have now to consider the charges, which relate to the modes of the Presence in the Eucharist, other than that which I have condemned, and which form the subject of the 8th, 9th, 10th, 11th, 14th, 17th, 21st, 22d, 23d, and 24th articles. I find them to be substantially as follows:—

That in the Sacrament of the Lord's Supper there is an actual presence of the Body and Blood of our Lord in the Consecrated Bread and Wine ;

That there is an actual Presence of the true Body and Blood of our Lord in the Sacramental Bread and Wine, without or external to the communicant, by virtue of, upon, and after the consecration of the same, irrespectively of the faith and worthiness of the communicant, so as to be received by all communicants irrespectively of their faith and worthiness ;

That there is an actual presence of the true Body and Blood of our Lord in the Consecrated Bread and Wine, without or external to the communicants, prior to and separate from the act of reception by the communicants ;

That in the Holy Communion the natural Body and Blood of our Saviour Christ are not only in heaven, but here, to wit, upon or before the Altars or Communion Tables of the Church in the Consecrated Elements ;

That in the Holy Communion the natural Body and Blood of our Saviour Christ are not only in heaven, but here, to wit, upon or before the Altars or Communion Tables of the Church under the form or veil of Bread and Wine ;

That the Body and Blood of our Lord are actually and objectively present upon the Altars or Communion Tables of the Church under the form or veil of, and in the Sacramental Bread and Wine, by virtue of, upon, and after the consecration of the same, irrespectively of the faith and worthiness of the communicant, so as to be received by

all communicants irrespectively of their faith and worthiness ;

That the Body and Blood of our Lord are actually and objectively present upon the Altars (thereby referring to the Communion Tables) of the Church under the form or veil of, and in the Consecrated Bread and Wine, prior to and separately from the act of reception by the communicants.

The first question for consideration is, whether the passages extracted from the work of the defendant do contain the opinions which are so charged against him. After an attentive perusal of the passages extracted, I have arrived at the conclusion that they do not contain the opinions relating to the Presence of the natural Body and Blood of our Saviour which are charged in the 11th, 17th, and 24th articles.

The passage which makes the nearest approach to the support of this charge is I think in the extract lettered D, in the 5th article, where he speaks of "the fact, that here before God's Altar is something far higher, far more awful, more mysterious, than aught that man can speak of—namely, the Presence of the Son of God in human flesh subsisting." It seems to me that the author, whose language is lamentably loose and inaccurate, did not mean by these words any more than the Presence of the Incarnate Son of God, and did not mean to express any opinion as to the Presence of his natural flesh and blood. And this opinion is confirmed by a comparison of the passage cited with other passages in his work, such as, for instance, one of the passages cited in the articles before me, lettered G, "a living real *spiritual* offering of Jesus Christ upon the Altar," and the often-repeated expression that the Presence of which he speaks is one under the veil of the elements of Bread and Wine, and various other passages which upon the whole lead me to the conclusion that he did not contemplate a physical or natural Presence of our Lord. I therefore consider the criminal articles on this point, 11, 17, and 24, not to be proved.

With respect to the other charges, of which I have given the summary, and which are stated at length in the 8th, 9th, 10th, 14th, 21st, 22d, and 23d articles, I think that they do fairly represent the opinions of the defendant contained in the passages set out, with one exception—namely, the words "irrespectively of the faith and worthiness of the communicant," which appear to point to an offence against the 29th Article of Religion, which was charged in the original articles and struck out by the Court. It may, however, be that these words are merely used in the sense of "prior to and separately from the act of reception by the communicants ;" and if so, they seem to me to fairly represent the opinion of the defendant.

*Object and Intention of the Formularies.*

I have now to consider whether these opinions contravene the Formularies of the Church, as contained in the passages set forth in the 28th article of the charge.

The authority upon which our Church principally relied in her Formularies with respect to the Sacraments was that of S. Augustine. His authority is especially referred to in the Articles, portions of which are indeed almost translations from his works; and Overall made the definition of S. Augustine, as subsequently moulded by the schoolmen, the basis of the doctrine on the Sacrament contained in our Catechism.<sup>1</sup> The "Sacramentum" is sometimes used as the "sacræ rei signum," although, as the 25th Article expressly asserts, a "signum efficax," as distinguished from a "signum merum," a sign, that is to say, by which, "as by an instrument" (Art. 27), the thing signified is effected. Sometimes "Sacramentum" is used more explicitly for the entire "ritus," in its internal and external elements. As a rite it consists of three parts, the outward elements, which are the *signum*, the *res*, which is the inward part or thing signified, that is, as our Catechism saith, "The Body and Blood which are verily and indeed taken and received by the faithful in the Lord's Supper," and the "*virtus*" or "the benefits whereof we are partakers thereby," that is, the strengthening and refreshing of our "souls with the body and blood of Christ, as our bodies are by the bread and wine." It is in this way that the Sacrament of the Lord's Supper is spoken of in our Catechism. Bishop Hampden in his *Bampton Lectures* thus remarks:—

"Theologians have not been content to rest on the simple fact of the Divine Ordinance, appointing certain external rites as essential parts of Divine Service on the part of man, available to the blessing of the receiver; but they have treated the Sacraments as effusions of virtue of Christ, physically quickening and strengthening the soul, in a manner analogous to the invigoration of the body by salutary medicines. The word 'Sacrament' itself, as understood in the Latin Church, is founded on this notion. Though derived from the military oath of the Romans, and so far bearing the mark of that deri-

<sup>1</sup> *Sacrificium ergo visibile invisibilis sacrificii Sacramentum, id est, sacrum signum est.*—Augustin. *De Civ. Dei*, lib. x. c. 5.

*Sacramentum est sacræ rei signum. Dicitur tamen sacramentum etiam sacrum secretum, sicut sacramentum divinitatis; ut sacramentum sit sacrum signans: sed nunc agitur de sacramento secundum quod est signum. Item, sacramentum est invisibilis gratiæ visibilis forma.*—*Lombard. Sent.*, lib. iv. dist. 1.

vation, as it denotes a solemn pledge of faith on the part of the receiver, in its established theological use it corresponded more properly with *μυστήριον* of the Greeks. It expressed, at first, accordingly, any solemn mysterious truth of Religion; and afterwards, by the usage of the schools, was appropriated to those acts in particular by which grace was conceived to be imparted to the soul, under outward and visible signs. The definition indeed, given in the Catechism of the Church of England, is exactly what the scholastic theory suggests; so far, at least, as the language of it characterises the nature of a Sacrament. It is in the subsequent application of this definition that the Church of England has modified and improved on the fundamental idea of the scholastic doctrine, whilst the idea itself is presented as being part of the very texture of technical theology."<sup>1</sup>

The 28th Article, "Of the Lord's Supper," says, "The Supper of the Lord is not only a sign of the love that Christians ought to have among themselves one to another, but rather a Sacrament of our redemption by Christ's death;" and it adds that to the worthy partaker the bread is a partaking of the body of Christ, and the cup a partaking of the blood of Christ; and the 29th Article says, that the wicked, "though they do carnally and visibly press with their teeth, as S. Augustine saith, the Sacrament of the body and blood of Christ, yet in nowise are they partakers of Christ, but rather to their condemnation do eat and drink the sign or Sacrament of so great a thing."

The first part of the Homily concerning the Sacrament contains the following passage: "Neither need we to think that such exact knowledge is required of every man, that he be able to discuss all high points in the doctrine thereof; but thus much we must be sure to hold, that in the Supper of the Lord there is no vain ceremony, no bare sign, no untrue figure of a thing absent (Matt. xxvi.);" that is, we ought to hold affirmatively that it is the true figure of a thing present.

The doctrine contained in these Formularies excludes the Zwinglian account of the Sacraments. On this point I will cite the opinion of Dr. Liddon, Professor of the Exegesis of Holy Scripture in the University of Oxford, and Canon of St. Paul's:—

"As our Lord's Divinity is the truth which illuminates and sustains the world-redeeming virtue of His death, so in like manner it explains and justifies the power of the Christian Sacraments as actual channels of supernatural grace. To those who deny that Jesus Christ is God, the Sacraments are

<sup>1</sup> *Bishop Hampden's Scholastic Philosophy*, lec. vii. p. 32. See also note B, p. 313.

naturally nothing more than 'badges or tokens' of social co-operation. The one Sacrament is only 'a sign of profession and mark of difference, whereby Christian men are discerned from others that be not christened.' The other is at best 'only a sign of the love that Christians ought to have one towards another.' Thus Sacraments are viewed as altogether human acts; God gives nothing in them; He has no special relation to them. They are regarded as purely external ceremonies, which may possibly suggest certain moral ideas by recalling the memory of a Teacher who died many centuries ago. They help to save His name from dying out among men. Thus they discharge the functions of a public monument, or of a ribbon or medal implying membership in an association, or of an anniversary festival instituted to celebrate the name of some departed historical worthy. It cannot be said that in point of effective moral power they rise to the level of a good statue or portrait since a merely outward ceremonial cannot recall character, and suggest moral sympathy as effectively as an accurate rendering of the human countenance in stone, or colour, or the lines of an engraving. Rites, with a function so purely historical, are not likely to survive any serious changes in human feelings and associations. Men gradually determine to commemorate the object of their regard in some other way, which may perhaps be more in harmony with their personal tastes; they do not admit that this particular form of commemoration, although enjoined by the Author of Christianity, binds their consciences with the force of any moral obligation; they end by deciding that it is just as well to neglect such commemorations altogether.

"If the Socinian and Zwinglian estimate of the Sacraments had been that of the Church of Christ, the Sacraments would long ago have been abandoned as useless ceremonies. But the Church has always seen in them not mere outward signs addressed to the taste or to the imagination, nor even signs (as Calvinism asserts) which are tokens of grace received independently of them, but signs which, through the power of the promise and words of Christ, effect what they signify. They are 'effectual signs of grace and God's goodwill towards us, by the which He doth work invisibly in us.' Thus in baptism the Christian child is made 'a member of Christ, a child of God, and an inheritor of the kingdom of Heaven;' and 'the Body and Blood of Christ are verily and indeed taken and received by the faithful in the Lord's Supper.' . . .

"That depreciation of the Sacraments has led with general consistency to depreciation of our Lord's Eternal Person, is a simple matter of history. True, there have been and are be-



lievers in our Lord's Divinity who deny the realities of sacramental grace. But experience appears to show that their position is only a transitional one. For history illustrates this law of fatal declension even in cases where sacramental belief, although imperfect, has been far nearer to the truth than is the naturalism of Zwingli. Many of the most considerable Socinian congregations in England were founded by the Presbyterians who fell away from the Church in the seventeenth century. The pulpit and the chair of Calvin are now filled by men who have, alas! much more in common with the Racovian Catechism than with the positive element of the theology of the Institutes. The restless mind of man cannot but at last push its principle to the real limit of its application, even although centuries should intervene between the premiss and the conclusion. Imagine that the Sacraments are only picturesque memorials of an absent Christ, and the mind is in a fair way to believe that the Christ who is thus commemorated as absent by a barren ceremony is Himself only and purely human."<sup>1</sup>

I hold it to have been the intention of the Formularies to exclude the Zwinglian doctrine of bare commemoration with respect to the Lord's Supper, although that error be not expressly mentioned.

The next error is, however, by name prohibited. "Transubstantiation," the Article says, "(or the change of the substance of bread and wine), in the Supper of the Lord, cannot be proved by Holy Writ; but is repugnant to the plain words of Scripture, overthroweth the nature of a Sacrament, and hath given occasion to many superstitions."—(Art. 28.) This is the only mode of the Presence which is *eo nomine* proscribed by the Articles. And I am not therefore surprised to find that in his charge of the year 1866 to the clergy of his diocese, the Bishop of St. David's, in contrasting our Communion service with the Roman Missal, and our doctrine of the Lord's Supper with that of Rome, should say:—

"And here I cannot refrain from pausing for a moment to remark, that there is perhaps no head of theological controversy in which our Church stands in more advantageous contrast with Rome, or in which we have more reason thankfully to recognise her characteristic moderation, than this. The tenet of Transubstantiation, decreed as an article of faith, combines in itself the two extremes of irreverent rationalism and presumptuous dogmatism."<sup>2</sup> . . .

"The Church of England, on the contrary, has dealt with this subject in a spirit of true reverence as well as of prudence and

<sup>1</sup> Liddon's *Bampton Lectures*, 1866, lec. viii. pp. 719, 725 (ed. 1867).

<sup>2</sup> Charge delivered by the Bishop of St. David's (1866), p. 96.

charity. She asserts the mystery, inherent in the institution of the Sacrament, but abstains from all attempts to investigate or define it, and leaves the widest range open to the devotional feelings and the private meditations of her children with regard to it. And this liberty is so large, and has been so freely used, that apart from the express admission of Transubstantiation, or of the grossly carnal notions to which it gave rise, and which, in the minds of the common people, are probably inseparable from it, I think there can hardly be any description of the Real Presence, which in some sense or other is universally allowed, that would not be found to be authorised by the language of eminent divines of our Church; and I am not aware, and do not believe, that our most advanced Ritualists have in fact overstepped those very ample bounds.”<sup>1</sup>

*Authorities as to the Construction of the Formularies relating to the Holy Eucharist.*

Having regard to the canons as to the liberty of clergymen laid down in the judgments to which I have referred, I venture to support the position of the Bishop of St. David's with the following authorities.

And first let me begin with those two authorities to whom I have already referred, and who demonstrate the identity of the present doctrine of the Church of England with that which she has maintained from Anglo-Saxon times upon the subject of the Presence in the Eucharist.

I select the following passages from the famous treatise of Ratramn:—

“Nunc redeamus ad illa, quorum causa dicta sunt ista; videlicet, corpus et sanguinem Christi. Si enim nulla sub figura mysterium illud peragitur, iam mysterium non rite vocitatur; quoniam mysterium dici non potest, in quo nihil est abditum, nihil a corporalibus sensibus remotum, nihil aliquo velamine contextum. At ille panis qui per Sacerdotis ministerium Christi corpus efficitur, aliud exterius humanis sensibus ostendit; et aliud interius fidelium mentibus clamat. Exterius quidem panis, quod ante fuerat, forma prætenditur, color ostenditur, sapor accipitur. Ast interius longe aliud, multoque pretiosius multoque excellentius intimatur; quia cœleste, quia divinum, id est Christi corpus ostenditur; quod non sensibus carnis; sed animi fidelis contuitu, vel aspicitur, vel accipitur, vel comeditur. Vinum quoque, quod *Sacerdotali consecratione* Christi sanguinis efficitur sacramentum, aliud

<sup>1</sup> Charge delivered by the Bishop of St. David's (1866), pp. 97, 98.

superficie tenus ostendit; aliud interius continet. Quid enim aliud in superficie; quam substantia vini conspicitur? Gusta, vinum sapit; Odora, vinum redolet; Inspice, vini color intuetur. At interius si consideres, jam non liquor vini, sed liquor sanguinis Christi credentium mentibus et sapit, dum gustatur; et agnoscitur, dum conspicitur; et probatur, dum odoratur. Hæc ita esse dum nemo potest abnegare, claret; quia panis ille vinumque figurate Christi corpus et sanguis existit. Non enim secundum quod videtur, vel carnis species nullo pane cognoscitur, vel in illo vino cruoris unda monstratur: cum tamen post mysticam consecrationem, nec panis, jam dicitur, nec vinum, sed Christi corpus et sanguis.”<sup>1</sup>

“Quærendum ergo est ab eis, qui nihil hic figurate volunt accipere, sed totum in veritatis simplicitate consistere; secundum quod demutatio facta sit: ut iam non sint quod ante fuerunt; videlicet, panis atque vinum sed sint corpus atque sanguis Christi? Secundum speciem namque creaturæ, formamque rerum visibilium, utrunque hoc, id est, panis et vinum, nihil habent in se permutatum.”<sup>2</sup>

“Sicut ergo paulo ante quam pateretur, panis substantiam et vini creaturam convertere potuit in proprium corpus quod passurum erat, et in suum sanguinem qui post fundendus exibat: sic etiam in deserto manna et aquam de petra in suam carnem et sanguinem convertere prævaluit quamvis longe post et caro illius in cruce pro nobis pendenda, et sanguis eius in ablutionem nostram fundendus superabat.”<sup>3</sup>

“Item consequenter: in illo sacramento Christus est: quia corpus Christi est. Non ergo corporalis esca, sed spiritualis est. Quid apertius; quid manifestius; quid divinius? Ait enim; in illo sacramento Christus est. Non enim ait ille panis et illud vinum Christus est. Quod si diceret, Christum corruptibilem (quod absit) et mortalitati subjectum predicaret. Quicquid enim in illa esca vel cernitur vel gustatur corporaliter, corruptibilitati constat obnoxium esse. Addit, quia corpus Christi est.

“Insurgis et dicis, Ecce manifeste illum panem, et illum potum corpus esse Christi confitetur. Sed, attende quemadmodum subjungitur. Non ergo corporalis esca, sed spiritualis est. Non igitur sensum carnis adhibeas. Nihil enim secundum eum hic decernitur. Est quidem corpus Christi, sed non corporale, sed spirituale. Est sanguis Christi, sed non corporalis, sed spiritualis. Nihil igitur hic corporaliter, sed spiritu-

<sup>1</sup> *Bertrami Presbyteri De Corpore et Sanguine Domini, etc.*, pp. 9-11. Edition published at Geneva, 1541; see also English edition, published at Dublin, 1753.

<sup>2</sup> *Ibid.* pp. 13, 14.

<sup>3</sup> *Ibid.* loc. cit., pp. 23, 24.

aliter sentiendum. Corpus Christi est, sed non corporaliter, et sanguis Christi est, sed non corporaliter.<sup>1</sup>

“Ponamus adhuc unum patris Augustini testimonium, quod et dictorum fidem nostrorum astruat, et sermonis marginem ponat. In sermone quem fecit ad populum de sacramento altaris, sic inquit, Hoc quod videtis in altari Dei, jam transacta nocte vidistis. Sed quid esset, quid sibi vellet, quam magnæ rei sacramentum contineret, nondum audistis. Quod ergo videtis, panis est, et calix, quod vobis etiam oculi vestri renuntiant: quod autem fides vestra postulat instruenda; panis, est corpus Christi; calix est sanguis Christi. Breviter quidem hoc dictum est quod fide forte sufficiat: sed fides instructionem desiderat. Dicit enim Propheta: Nisi credideritis, non intelligetis. Potestis ergo dicere mihi, præcepisti ut credamus: expone ut intelligam. Potest enim animo cujuspiam cogitatio talis oboriri: Dominus noster Jesus Christus novim unde acceperit carnem, de Virgine scilicet Maria, infans lactatus est, nutritus est, crevit, ad juvenilem ætatem perductus est, a Judæis persecutionem passus est, ligno suspensus est, interfectus est, de ligno depositus est, sepultus est, tertio die resurrexit, quo die voluit, in cælum ascendit, illuc levavit corpus suum, inde venturus est judicare vivos et mortuos, ibi est modo sedens ad dexteram Patris. Quomodo panis corpus eius; et calix, vel quod habet calix; quo modo ejus est sanguis? *Ista fratres, ideo dicuntur sacramenta quia in eis aliud videtur, et aliud intelligitur.* Quod videtur, speciem habet, corporalem, quod intelligitur fructum habet spirituales. Ista venerabilis Author dicens, instruit nos quid de proprio corpore Domini, quod de Maria natum, et nunc ad dexteram Patris sedet, et in quo venturus et judicare vivos et mortuos; et quid de isto, quod super altare ponitur, et populo participatur, sentire debeamus. Illud integrum est, neque ulla sectione dividitur, nec ulis figuris obvelatur. Hoc vero quod supra mensam Domini continetur, et figura est, quia sacramentum est: et exterius quod videtur speciem habet corpoream quæ pascit corpus: interius vero quod intelligitur, fructum habet spirituales, qui vivificat animam.”<sup>2</sup>

<sup>1</sup> Bertrami, *loc. cit.*, pp. 41, 42.

<sup>2</sup> *Ibid.* pp. 61-64.

The learned Cave says, “*Bertramnus* rectius *Ratramnus* natione ut videtur Gallus in veteri monasterio Corbeiensi monachus et presbyter tandem favente Carolo Calvo in diocesi Suessoniensi cœnobii præpositus. Claruit anno 840 quo circa tempore vel paulo ante ad scribendum se accinxit.”

He wrote, “De Virgine Dominum parturiente,” “De Predestinatione,” 849; “et paulo post decantatissimum illum de *Eucharistia* libellum in lucem emississe videtur.” . . .

“*De Corpore et Sanguine Domini* liber in quo quam aperte quam diserte

Of this book of Bertram's Bishop Hampden says :—

"The opposition of controversy, whilst it led the orthodox to assert an actual presence of the incarnate Christ under the sacramental symbols of bread and wine, made them charge their adversaries with holding the Sacraments to be only *signs*, memorials of Christ's passion, and not the actual oblation. And this may account for the pointed expression in one article, that "The Supper of the Lord is not only a *sign* of the love which Christians ought to have among themselves, but rather is a Sacrament of our Redemption." In denying an actual communication of Christ to the sacred emblems, it became necessary to guard against the construction of asserting a merely commemorative right, and thus evacuating the Sacrament of its holy burthen of grace. For neither *Ratramn*, in opposing the doctrine of Paschase, nor afterwards *Berenger*, in advocating the views of *Erigena* against *Lanfranc*, appear to have held that the Eucharist was *nothing more* than a sign. Ratramn, indeed, distinctly asserts a *real* presence, though he does not admit a presence of the crucified body of Christ in the consecrated bread and wine. It is a real and true presence that he asserts, the virtue of Christ acting in the way of efficacious assistance to the receiver of the Sacrament. The Church of England doctrine of the Sacraments, it is well known, is founded on the views given by this author. Cranmer and Ridley are said to have studied his work together, and to have derived their first ray of light on the subject from that study.<sup>1</sup>

And the Bishop of St. David's, in his Charge of 1857, remarks :—

"And as Paschasius and Ratramn no doubt frequently communicated at the same altar, so notwithstanding the wide divergency of their opinions, they may have done so with de re Eucharistica agit et transubstantiationis dogma prout in scholis pontificiis explicatur quam dilucide refellit, norunt quot quot vel prima theologiæ tyrocinia posuerunt."

Then he repels the calumny of the Romanists that the word was corrupt and interpolated ; and speaks of Ælfric's work—

"Adversus quos fidem faciunt tot vetusti codices et Ælfrici nostri qui anno 960 floruit. homilia Paschalis ex Ratramni libello pœne *ad verbum* desumpta."—(*Scriptorum Ecclesiasticorum Hist. Lit.* [ed. 1745] tom. ii. p. 27.)

Of *Paschasius Radbertus* (Cave says), "gente Gallus natus est anno circiter 786. Prima pietatis et doctrinæ tyrocinia posuit inter monachos qui majori monialium Suessionensium cœtui inserviebant," he entered under Adelard in 844. "Præfecturam cœnobii Corbeiensis obtenuit."

"Primus auctor (fatente ipsomet Bellarmino de Script. Eccles. p. 266) qui serio et copiose scripsit de veritate Corporis et Sanguinis Domini in Eucharistia." Cave however pronounces even of Paschasius, "non pauca tradere quæ cum recepta Ecclesiæ Romanæ doctrina nequaquam conveniunt."—*Ibid.* p. 32.

<sup>1</sup> *Bishop Hampden's Bampton Lectures*, 1832 ; Lecture vii. p. 320.

equal benefit to themselves. But the consequences of their dispute were not of slight moment, and are seen and felt at this day. Paschasius contributed more than any individual before Lanfranc to the preponderance of that belief which became the dogma of transubstantiation. Ratramn's treatise, as is well known, exercised a most powerful influence on the mind of Ridley, and was thus mainly instrumental in fixing the doctrine of the Church of England on the Eucharist, or rather in restoring that of the Anglo-Saxon Church, *as expounded in exact conformity to the ideas and partly in the very words of Ratramn*, by Ælfric, in the Paschal Homily, where he teaches, 'This mystery is a pledge and a symbol; Christ's body is truth. This pledge we hold mystically, until we come to the truth, and then will this pledge be ended.'<sup>1</sup>

"Most justly, therefore, did Canon Hopkins observe (in the dissertation prefixed to his edition of the treatise, ed. 1868, c. v. p. 105) that 'the doctrine of Ratramn was the very same doctrine which the Church of England embraced as most consonant to Scripture and the fathers.' Which is not what our adversaries would put upon us, that the Sacrament of the Lord's Supper is a naked commemoration of our Saviour's death, and a mere sign of His body and blood, but an efficacious mystery accompanied with such a divine and spiritual power as renders the consecrated elements truly, though mystically, Christ's body and blood, and communicates to us the real fruits and saving benefits of His bitter passion. And this is the doctrine of Bertram in both parts of his work."<sup>2</sup>

Next in order of date and importance are the works of the Anglo-Saxon Abbot of Malmesbury and St. Alban's, Ælfric, who was, perhaps, also Archbishop of Canterbury from 995 to 1005.<sup>3</sup> His sermon of the "Paschall Lambe" was first printed in Saxon character, and in Queen Elizabeth's reign published, as I have already said, by Archbishop Parker, and subscribed by him and his suffragans; the object being to show that the doctrine of the Eucharist in the English Church was not an innovation upon, but a revival of, the Catholic faith.

To the publication of this work Parker prefixed the following preface:—

"As the writynges of the Fathers even of the first age of the Church be not thought on all parts so perfect that whatsoever thyng hath been of them spoken ought to be receaved, without

<sup>1</sup> Mr. Thorpe's Translation, vol. ii. p. 273, in the publications of the Ælfric Society.

<sup>2</sup> Appendix to Charge of Bishop of St. David's, p. 135.

<sup>3</sup> *Anglia Sacra*, vol. i. p. 125; Lingard, *Hist. and Antiq. of Anglo-Saxon Church*, vol. ii. pp. 311, 399.

all exception (which honour trulye themselves both knewe and also have confessed to be only due to the most holy and tryed word of God), so in this Sermon here published some thynges be spoken not consonant to sounde doctrine, but rather to such corruption of great ignorance and superstition as hath taken root in the Church of long time, being overmuch cumbered with monckery.

“As where it speaketh of the Masse to be profitable to the quick and dead; of the mixture of water with wyne, and whereas here also is reportes made of ij vayne miracles . . . with some other suspitious words sounding to superstition. But all these things that be thus of some reprehension be as it were but by the way touched: the full and whole discourse of all the former part of the Sermon and almost of the whole Sermon is about the understanding of the Sacramentall bread and wine howe it is the bodye and bloude of Christ our Saviour, by which is revealed and made knowen what hath been the common taught doctrine of the Church of England on this behalf many hundreth years agoe contrarye to the unadvised wrytyng of some nowadays. Now that thys foresaid Saxon Homely with the other testimonies before alledged doe fullye agree to the olde auncient bookes (whereof some bee written in the olde Saxon and some in the Lattyne) from whence they are taken; these here underwritten upon delegant perusing and comparing the same, have found by conference that they are trulye put forth in print without any adding or withdrawing anything for the more faithful reporting of the same and therefore for the better credite thereof, have subscribed their names:—

“Matthewe, Archbishop of Canterbury.

“Thomas, Archbishop of York.

“Edmund, Bishop of London.

“James, Bishop of Durham.

“Robert, Bishop of Winchester.

“William, Bishop of Chichester.

“John, Bishop of Hereford.

“Richard, Bishop of Elye.

“Edwine, Bishop of Worcester.

“Nicholas, Bishop of Lincoln.

“Richard, Bishop of St. Davys.

“Thomas, Bishop of Lichfield and Coventry.

“John, Bishop of Norwich.

“John, Bishop of Carlisle.

“Nicholas, Bishop of Bangor.

“With divers other personages of honour and credit subscribing their names,” etc.

Parker entitled this book—

“ A Sermon of the Paschall Lambe, and of the Sacramentall Body and Bloude of Christ our Saviour, written in the olde Saxon tounge before the Conquest, and appoynted in the reigne of the Saxons to be spoken unto the people at Easter before they shoulde receave the Communion, and now first translated into our common Englishe speche.”

I select the following extracts :—

“ We Christens keep Christes resurrection as the time of Easter these vii dayes, because, through Hys suffering and rising we be delivered and be made clean by going to this holy housel, as Christ sayth in His Gospel, ‘ Verely, verely, I say unto you, ye have no life in you, except ye eate my Flesh, and drinke my Bloud. He that eateth my Flesh, and drinketh my Bloud, abideth in me, and I in him, and hath the everlasting life ; and I shall raise him up at the last day.’ ‘ I am the lively bread that came down from Heaven, not so as your forefathers eate the Heavenlye bread in the wilderness and afterwarde dyed. He that eateth thys bread he liveth for ever.’ He blessed bread before His suffering, and divided it to His disciples, thus saying, ‘ Eate this bread, it is My Body, and do this in my remembraunce.’ Also He blessed wyne in a cuppe, and said : ‘ drink ye all of thys. Thys is My Bloude that is shedde for many in forgeuenesse of sinnes.’

“ The Apostles dyd as Christ commaunded, that is, they blessed bread and wine to housell agayne afterwarde in His remembrance. Even so also their successoures and all priestes by Christes commaundement doe blesse bread and wine to housell in hys name with the apostolike blessing.

“ Now, several men have often searched, and do yet often search, howe bread that is gathered of corne, and through fyers heated baked, may bee turned to Christes body, or how wyne that is pressed out of many grapes is turned through any blessing to the Lordes Bloude.

“ Now, saye we to suche men, that some thinges be spoken of Christ by signification, some by things certain. . . .

“ Why, then, is the holy housel called Christ’s Body, or his Bloud, if it be not truely that it is called? Truly, the bread and the wine, which by the masse of the priest be hallowed, shewe one thyng without to humayne understanding, and an other thing they call within, to belieuing mindes. Without they bee sene bread and wine both in figure and in tast : but they be truly, after the hallowing, Christe’s Body and Hys Bloude, through ghostly mistery. Beholde, nowe we see two thynges in this one creature, after true nature, the water is corruptible water, and after ghostlye misterye hath healing



mighte. So also if we beholde the holye housell after bodely understanding, then we see that it is a creature corruptible, and mutable: if we acknowledge therein ghostly myght, then understand we that lyfe is therein, and that it giveth immortalitie to them that eat it with beliefe; much is betwixt the invisible myghte of the holye housell, and the visible shape of hys proper nature. It is naturally corruptible bread, and corruptible wine, and is by myghte of God's worde truly Christes Bodye and Hys Bloode, not so, notwithstanding bodely but ghostly. Much is betwixt the Body Christ suffered in and the bodye that is hallowed to housell; . . . his ghostly Body, which we call the housell, is gathered of many cornes, without bloude and bone, without lymme, and without soule, and therefore nothing is to be vnderstode therein bodelye, but all is ghostly to be vnderstode. Whatsoever is in that housell which giveth substaunce of lyfe, that is of the ghostlye myghte, and invisible doing—therefore is the holy housell called a misterye, because there is one thing in it seene, and another thing understode—that which is ther sene, hath bodely shape, and that we do there understand, hath ghostlye might.

“Certaynely Christes Bodye, which suffered death and rose from death, never dyeth henceforth: but is eternal and vnpassible. The housell is temporall, not eternall. Corruptible, and dealed into sundry parts; chewed between teeth, and sent into the bellye, howbeit, nevertheless, after ghostlye myght, it is all in every part. Manye receive the Holy Body: and yet, notwithstanding it is so all in every parte, after ghostly mistery; though, to some man fall a less deale, yet there is no more myghte, notwithstanding, in the more parte, than in the lesse, because it is all in each man after the invisible myght.

“Thys mistery is a pledge and a figure, Christes Body is truth itself. Thys pledge we do keepe mystically until that we be come to the truth itselfe, and then is this pledge ended. Truelye, it is so as we before have said, Christes Bodye and Hys Bloode, not bodelye, but ghostlye. And ye shoulde not search how it is done, but holde it in your beliefe that it is so done. . . .

“Let us now heare the apostles wordes about this mystery; Paule the Apostle speaketh of the old Israelites thus, writing in his Epistle to faithfull men, ‘All our forefathers were baptised in the cloud and in the sea; and all they eat the same ghostlye meat, and drank the same ghostlye drink. They drank truelye of the stone that followed them, and that stone was Christ. Neither was the stone then from which the water ranne, bodely Christ, but it signified Christ, that calleth thus to all beleaving and faithfull men: whosoever thirsteth, let him come to me

and drinke. And from his bowels floweth lyuely water! This he sayde of the holy ghost, whom he receiueth which beleaveth on hyme.

"The Apostle Paule sayth that the Israelites did eat the same ghostly meate, and drink the same ghostly drinke: because the Heavenly meate that fed them forty years, and the water which from the stone did flow, had signification of Christes Bodye and His Bloude, that now be offered dayly in God's Church. It was the same which we now offer, not bodely, but ghostly.

"We sayd unto you, a little before, that Christ hallowed bread and wine to housell before His suffering, and sayd, This is My Body, and My Bloud. Yet, he had not then suffered. But so, notwithstanding, He turned, through invisible might, the bread to His own Body, and the wyne to his Bloode, as He before did in the wilderness, before that He was borne a man, when He turned that heauenly meat to His fleshe, and the flowing water from the stone to Hys own bloude.

"Very many ate of the Heaventye meate in the wilderness, and drank the ghostlye drinke, and were nevertheless dead, as Christ sayd. And Christ ment not the death which none can escape, but the everlastynge death which some of the folke deserved for their unbelieve.

. . . "The Saviour sayde, He that eateth My flesh, and drinketh My blood, hath everlasting life. He bade them not to eat the Body which he was encompassed with, nor the Bloud to drink which He shed for us; but He meant with those wordes, the holy housell, which ghostly is His Body and His Bloud; and he that tasteth it with believing hart hath the Eternal lyfe. In the old law faithful men offred to God divers sacrifices, that had foresignification of Christes Body, which for our sinnes he himselfe to his heavenly father hath since offred as a sacrifice."<sup>1</sup>

I will now refer to the letter of Ælfric, already mentioned, to Wulfstone, Archbishop of York, also translated into English in the reign of Elizabeth, and commented upon by the learned Dr. Routh, as a valuable illustration of the Church's doctrine as to the Eucharist.

"Christ Himselfe blessed housell before His suffering. He blessed the bread and brake thus speaking to His Apostles: *Eate this bread, it is My Body.* And agayne He blessed one chalice with wyne and thus also speaketh vnto them: *Drinke ye all of this, it is Myne own Blood of the Newe Testament which is shed for many in forgeuenes of synnes.* The Lord which halowed housel before his suffering, and sayeth that the bread

<sup>1</sup> *A Sermon of the Paschall Lambe, etc.* Lumley, 1849. Also printed in *Homilies of the Anglo-Saxon Church*, vol. ii., published in 1846.

was His owne Body and that the wyne was truly His Bloud, He haloweth dayly by the hands of the prist bread to His Body, and wyne to His Bloud in ghostly mystery, as we read in bokes. And yet that lively bread is not bodely so notwithstanding: not the self same Body that Christ suffered in. Nor that holy one is the Saviour's Bloud which was shed for vs in bodely thing, but in ghostly vnderstanding. Both be truly that bread Hys Body, and that wyne also His Bloud, as was the Heavenly bread, which we call Manna, that fed forty yeres God's people. And the cleare water which did then runne from the stone in the wilderness, was truly his Bloud, as Paul wrote on summe of his epistles."<sup>1</sup>

The next authority to which I refer is that of Bishop Ridley. In his examination at Oxford it was articulated against him:—

"First, that thou, Nicholas Ridley, in this high University of Oxford, anno 1554, in the months of April, May, June, July, or in some one or more of them, hast affirmed, and openly defended and maintained, and in many other times and places besides, that the true and natural body of Christ, after the consecration of the priest, is not really present in the sacrament of the altar."

To this Ridley answers:—

"In a sense the first article is true, and in a sense it is false; for if you take *really* for *vere*, for spiritually, by grace and efficacy, then it is true that the natural body and blood of Christ is in the sacrament *vere et realiter*, indeed and really; but if you take these terms so grossly that you would conclude thereby a natural body having motion to be contained under the forms of bread and wine, *vere et realiter*, then really is not the body and blood of Christ in the Sacrament, no more than the Holy Ghost is in the element of water in our baptism."

The answer being cavilled at, he added this explanation:—

"For both you and I agree herein, that in the sacrament is the very true and natural body and blood of Christ, even that which was born of the Virgin Mary, which ascended into Heaven, which sitteth on the right hand of God the Father, which shall come from thence to judge the quick and the dead; only we differ *in modo*, in the way and manner of being; we confess all one thing to be in the sacrament, and dissent in the manner of being there. I, being fully by God's word thereunto persuaded, confess Christ's natural body to be in the sacrament indeed by spirit and grace, because that whosoever

<sup>1</sup> Ex Aelfrici Epistola ad Wulfstanum Archiepiscopum Eboracensum, Saxonice scripta; in Anglicam linguam, regnante Elizabetha, in Latinam vero, interprete Abrahamo Wheloco, conversa.—Routh, *Scriptorum Ecclesiasticorum Opuscula*, vol. ii. pp. 169-175.

receiveth worthily that bread and wine receiveth effectuously Christ's body, and drinketh his blood (that is, he is made effectually partaker of his passion); and you make a grosser kind of being, enclosing a natural, a lively, and a moving body, under the shape or form of bread and wine. Now, this difference considered, to the question thus I answer, that in the sacrament of the altar is the natural body and blood of Christ *vere et realiter*, indeed and really, for spiritually, by grace and efficacy; for so every worthy receiver receiveth the very true body of Christ. But if you mean really and indeed, so that thereby you would include a lively and a moveable body under the forms of bread and wine, then, in that sense is not Christ's body in the sacrament really and indeed."

The second article of charge against him is:—

(2.) "Item, that in the year and months aforesaid thou hast publicly affirmed and defended, that in the sacrament of the altar remaineth still the substance of bread and wine."

Ridley says:—

"In the sacrament is a certain change, in that that bread which was before common bread is now made a lively presentation of Christ's body, and not only a figure, but effectuously representeth his body; that even as the mortal body was nourished by that visible bread, so is the natural soul fed with the heavenly food of Christ's body, which the eyes of faith see, as the bodily eyes see only bread. Such a sacramental mutation I grant to be in the bread and wine, which truly is no small change, but such a change as no mortal man can make, but only that omnipotency of Christ's word."<sup>1</sup>

From his disputation at Oxford I extract the following passages:—

"He that sitteth there is here present by mystery and grace; and here is holden of the godly, such as communicate him, not only sacramentally with the hand of the body, but, much more wholesomely, with the hand of the heart, and by inward drinking is received, but by the sacramental signification is holden of all men."<sup>2</sup>

"I grant the bread to be converted and turned into the flesh of Christ; but not by transubstantiation, but by sacramental converting or turning. 'It is transformed,' saith Theophylact in the same place, 'by a mystical benediction, and by the accession or coming of the Holy Ghost unto the Flesh of Christ. He saith not by expulsion or driving away the substance of bread, and by substituting or putting in its place the corporal substance of Christ's Flesh. And whereas he saith, 'It is not a figure of the body,' we should understand that saying, as

<sup>1</sup> *Ridley's Works*, pp. 271-274.

<sup>2</sup> *Ibid.* p. 223.

he himself does elsewhere, add 'only,' that is, it is no naked or bare figure *only*. For Christ is present *in* the mysteries; neither at any time, as Cyprian saith, doth the Divine Majesty abstract Himself from the Divine mysteries."<sup>1</sup>

And in answer to the following argument of Curtop:—

"That which is in the cup is the same that flowed from the side of Christ:

"But true and pure blood did flow from the side of Christ:

"Ergo, His true and pure blood is in the cup,"—

RIDLEY says,—“It is his true blood which is in the chalice, I grant, and the same which sprang from the side of Christ. But how? It is blood indeed, but not after the same manner, after which manner it sprang from his side. For here is the blood, but by way of a sacrament. Again, I say, like as the bread of the sacrament and of thanksgiving is called the body of Christ given for us; so the cup of the Lord is called the blood which sprang from the side of Christ; but that sacramental bread is called the body, because it is the sacrament of his body. Even so likewise the cup is called the blood also which flowed out of Christ's side, because it is the sacrament of that blood which flowed out of his side, instituted of the Lord himself for our singular commodity—namely, for our spiritual nourishment; like as baptism is ordained in water to our spiritual regeneration.”

CURTOP.—“The sacrament of the blood is not the blood.”

RIDLEY.—“The sacrament of the blood is the blood; and that is attributed to the sacrament which is spoken of the thing of the sacrament.”

WESTON.—“That is very well. Then we have blood in the chalice.”

RIDLEY.—“It is true; but by grace, and in a sacrament.”<sup>2</sup>

From the Homily concerning the Sacrament, the first part, I take this passage:—

“Neither need we to think that such exact knowledge is required of every man, that he be able to discuss all high points in the doctrine thereof; but thus much we must be sure to hold, that in the Supper of the Lord there is no vain ceremony, no bare sign, no untrue figure of a thing absent (Matt. xxvi. 26). But, as the Scripture saith, the Table of the Lord, the bread and cup of the Lord, the memory of Christ, the annunciation of His death, yea, the communion of the Body and Blood of the Lord, in a marvellous incorporation, which, by the operation of the Holy Ghost (the very bond of our conjunction with Christ), is through faith wrought in the souls of the faithful,

<sup>1</sup> *Ridley's Works*, p. 229.

<sup>2</sup> *Ibid.* p. 238.

whereby not only their souls live to eternal life, but they surely trust to win to their bodies a resurrection to immortality. (1 Cor. x.) The true understanding of this fruition and union, which is betwixt the body and the head, betwixt the true believers and Christ, the ancient Catholic fathers, both perceiving themselves and commending to their people, were not afraid to call this Supper, some of them, the salve of immortality and sovereign preservative against death; other a deifical communion; other, the sweet dainties of our Saviour, the pledge of eternal health, the defence of faith, the hope of the resurrection; other, the food of immortality, the healthful grace, and the conservatory to everlasting life.—*Iren.* lib. iv. cap. 34; *Ignat. Epist. ad Ephes.* *Dionysius, Origen, Optat.*; *Cyp. de Cœna Domini*; *Atha. de Pec. in Spir. Sanct.* All which sayings, both of the Holy Scripture and godly men, truly attributed to this celestial banquet and feast, if we would often call to mind, oh! how would they inflame our hearts to desire the participation of these mysteries, and oftentimes to covet after this bread; continually to thirst for this food! Not as specially regarding the terrene and earthly creatures which remain, but always holding fast and cleaving by faith to the Rock, whence we may suck the sweetness of everlasting salvation.”

In Jewel's Apology I find these expressions:—

“Panem et vinum dicimus esse sana et cœlestia mysteria corporis et sanguinis Christi, et illis Christum ipsum, verum panem æternæ vitæ sic nobis præsentem exhiberi, ut ejus corpus, sanguinemque per fidem vere sumamus.”

And again:—

“... Nec tamen cum ista dicimus, extenuamus Cœnam Domini, aut eam frigidam tantum cæremioniam esse docemus, et in ea nihil fieri, quod multi nos docere calumniantur. Christum enim aperimus, vere *sese præsentem exhibere in Sacramentis suis*, in Baptismo ut eum induamus; in Cœna, ut eum fide et spiritu comedamus, et de ejus cruce ac sanguine habeamus vitam æternam; idque dicimus non perfunctorie, et frigide, *sed re ipsa et vere fieri*. . . . Christus ipse totus quantus quantus est, offertur et traditur.”

Bishop Overall, in his Additional Notes to the Book of Common Prayer, on the words, “That we, receiving these Thy creatures of Bread and Wine, etc., may be partakers of His blessed Body and Blood,” says:—

“Together with the hallowed elements of the Bread and Wine, we may receive the Body and Blood of Christ, which are truly exhibited in this Sacrament, the one as well as the other.

“These words, as I once conferred with a Papist, were

mightily excepted against, because forsooth they must acknowledge no bread and wine, but a desition of the nature and being of both. My answer was, that here we term them so before consecration; after that we call them so no more, but abstain from that name, because our thoughts might be wholly taken up with the spiritual food of Christ's Body and Blood. So in the Thanksgiving following we say, *That hast vouchsafed to feed us who have duly received these holy Mysteries, with the spiritual food of the most precious Body and Blood of Thy Son, etc.* In the meanwhile we deny not the Bread and Wine to remain there still as God's creatures. And I wonder the Papists should so contend for this same *desitio panis et vini*, whenas, in their own service or mass, they abstain not from these words, THY CREATURES, after consecration, as we do. See the book, PER QUEM OMNIA DOMINE BONE CREAS! A certain argument that the Church of Rome never meant to teach that doctrine, which private men, the late doctors and schoolmen, have brought up and propagated."<sup>1</sup>

And on the words "And if any of the Bread and Wine," etc. :—

"It is confessed by all divines that upon the words of the consecration, the Body and Blood of Christ is really and substantially present, and so exhibited and given to all that receive it, and all this not after a physical and sensible, but after an heavenly and incomprehensible manner. But there yet remains this controversy amongst some of them, whether the Body of Christ be present only in the use of the Sacrament and in the act of eating, and not otherwise. They that hold the affirmative, as the Lutherans (in Confess. Sax.) and all Calvinists, do seem to me to depart from all antiquity, which places the Presence of Christ in the virtue and benediction used by the Priest, and not in the use of eating the Sacrament."<sup>2</sup>

George Herbert, who has been called "the saintly," says :—

"The country parson, being to administer the Sacraments, is at a stand with himself how or what behaviour to assume for so holy things. Especially at communion time he is in a great confusion, as being not only to receive God, but to break and administer Him. Neither finds he any issue in this, but to throw himself down at the Throne of Grace, saying, Lord, Thou knowest what Thou didst, when Thou appointedst it to be done thus, therefore do Thou fulfil what Thou dost appoint, for Thou art not only the feast, but the way to it."—(*The Parson in Sacraments*, chap. xxii.) "A Priest to the Temple."

<sup>1</sup> Appendix to Nicholls on the Book of Common Prayer.

<sup>2</sup> *Ibid.*

Archbishop Laud, in his memorable contest with the Papist Fisher, observes :—

“ And for the Church of England, nothing is more plain than that it believes and teaches the true and real presence of Christ *in* the Eucharist.”

And again :—

“ As for the learned of those zealous men that died in this cause in Queen Mary’s days, they denied not the real presence simply taken, but as their opposites forced transubstantiation upon them, as if that and the real presence had been all one. Whereas all the ancient Christians ever believed the one, and none but modern and superstitious Christians believe the other. . . . Nay, Archbishop Cranmer comes more plainly and more home to it than Frith. ‘ For, if you understand,’ saith he, ‘ by this word really, *reipsa* : that is in very deed and effectually ; so Christ, by the grace and efficacy of His passion, is indèed and truly present,’ etc. But if by this word *really* you understand *corporaliter*, corporally in His *natural* and *organical* body, under the forms of bread and wine, it is contrary to the holy word of God.’ And so likewise Bishop Ridley. Nay, Bishop Ridley adds yet further, and speaks so fully to this point, as I think no man can add to his expression ; and it is well if some Protestants except not against it. ‘ Both you and I,’ saith he, ‘ agree in this ; that in the Sacrament is the very true and natural body and blood of Christ, even that which ascended into heaven, which sits on the right hand of God the Father, which shall come from thence to judge the quick and the dead ; only we differ *in modo*, in the way and manner of being. We confess all one thing to be in the Sacrament, and dissent in the manner of being there. I confess Christ’s natural body to be in the Sacrament by spirit and grace, etc. You make a grosser kind of being enclosing a *natural body* under the shape and form of bread and wine.’ So far and more, Bishop Ridley. And Archbishop Cranmer confesses that he was indeed of another opinion, and inclining to that of Zuinglius, till Bishop Ridley convinced his judgment and settled him in this point. . . .”<sup>1</sup>

Bishop Andrewes, in his answer to Bellarmine, says :—

“ The Cardinal is ‘ not, unless ‘ willingly, ignorant,’ that Christ hath said, ‘ This is My Body,’ not ‘ This is My Body *in this mode*.’ Now about the object we are both agreed ; all the controversy is about the *mode*. The ‘ This is,’ we firmly believe ; that ‘ it is in this mode’ (the Bread, namely, being

<sup>1</sup> *Laud v. Fisher*, Cardwell’s Ed., Oxford, 1839, pp. 245-49.



transubstantiated into the Body), or of the mode whereby it is wrought, that 'it is,' whether *in*, or *with*, or *under*, or *transubstantiated*, there is not a word in the Gospel. And because not a word is there, we rightly detach it from being a matter of faith; we may place it amongst the decrees of the schools, not among the articles of faith. What Durandus is reported to have said of old (*Neand. Synop. Chron.*, p. 203) we approve of: 'We hear the word, feel the effect, know not the manner, believe the Presence.' The Presence, I say, we believe, and that no less true than yourselves. Of the mode of the Presence, we define nothing rashly, nor, I add, do we curiously inquire; no more than how the Blood of Christ cleanseth us from our Baptism; no more than how in the Incarnation of Christ the human nature is united into the same Person with the Divine."<sup>1</sup>

Again:—

"And I may safely say it with good warrant from those words especially and chiefly, which as He Himself saith of them, are 'spirit and life,' even those words, which joined to the element make the blessed Sacrament."<sup>2</sup>

And again:—

"All witnesses testify in favour of mutation, immutation, transmutation, but there is no mention of *substantial*, or of substance. Nor do we deny the preposition *trans*, and we acknowledge the *elements* to be *transmuted*. But we seek in vain for *substantial*. Nor do we deny that the elements are changed by the benediction, so that the consecrated bread is not that which nature has formed, but that which the benediction has consecrated, and even changed by consecration. And we believe with Nyssen that *the nature of the bread and wine was changed*, but neither he nor we to be *transubstantiated*."<sup>3</sup>

"Beloved" (Donne says), "in the blessed, and glorious, and mysterious Sacrament of the body and blood of Christ Jesus, thou seest *Christum Domini*, the Lord's salvation, and thy salvation, and that thus far with bodily eyes, that bread which thou seest after the consecration is not the same bread which was presented before, not that it is transubstantiated to another substance, for it is bread still (which is the heretical riddle of the Roman Church, and Satan's sophistry, to dishonour miracles by the assiduity, and frequency, and multiplicity of them), but that it is severed, and appropriated by God in that ordinance to another use. It is other bread; so

<sup>1</sup> *Responsio ad Apologiam Card. Bellarmine*, p. 11.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

as a judge is another man upon the bench than he is at home in his own house."

"Luther" (speaking of the Roman Church) "infers well, that since miracles are so easy and cheap, and obvious to them, as they have induced a miraculous transubstantiation, they might have done well to have procured one miracle more, a transaccidentation, that since the substance is changed, the accidents might have been changed too, and since there is no bread, there might be no dimensions, no colour, no nourishing, no other qualities of bread neither, for, these remaining, there is rather an annihilation of God, in making him no God by being a contradictory God, than an annihilation of the bread, by making that which was formerly bread, God himself, by that way of transubstantiation.

"But yet though this bread be not so transubstantiated, *we refuse not the words of the fathers*, in which they have expressed themselves in this mystery. Not Irenæus' *est corpus*, that that bread is his body now, not Tertullian's *fecit corpus*, that that bread is made his body which was not so before, not St. Cyprian's *mutatus*, that that bread is changed, not Damascen's *supernaturaliter mutatus*, that that bread is not only changed so in the use, as when at the king's table certain portions of bread are made bread of essay, to pass over every dish whether for safety or for majesty; not only so civilly changed; but *changed supernaturally*; no, nor Theophylact's *transformatus est* (which seems to be the word that goes farthest of all), for this transforming cannot be intended of the outward form and fashion, for that is not changed; but be it of that internal form, which is the very essence and nature of the bread, so it is transformed, so the bread hath received a new form, a new essence, a new nature, because whereas the nature of bread is but to nourish the body, the nature of this bread now is to nourish the soul, and therefore, *Cum non dubitavit Dominus dicere, Hoc est corpus meum, cum signum daret corporis*, since Christ forbore not to say, This is my body, when he gave the sign of his body, why we should forbear to say of that bread, This is Christ's body, which is the Sacrament of his body?"<sup>1</sup>

Bishop Cosin, who was one of the Convocation Committee which prepared our present Prayer-Book, and who wrote the history of transubstantiation, observes in it:—

"(3) We believe a *presence and union of Christ with our soul and body, which we know not how to call better than sacramental*,

<sup>1</sup> *Donne's Works*, vol. i. pp. 73, 74, 75.

that is effected by eating; that while we eat and drink the consecrated bread and wine, we eat and drink therewithal the body and blood of Christ, not in a corporal manner, but some other way, incomprehensible, known only to God, which we call *spiritual*; for if with St. Bernard and the fathers a man goes no further, we do not find fault with a general explication of the manner, but with the presumption and self-conceitedness of those who boldly and curiously inquire what is a spiritual presence, as presuming they can understand the manner of acting of God's holy spirit. We contrariwise confess with the fathers, that this manner of presence is unaccountable, and past finding out, not to be searched and pried into by reason, but believed by faith. And if it seems impossible that the flesh of Christ should descend, and come to be our food, through so great a distance, we must remember how much the power of the Holy Spirit exceeds our sense and our apprehensions, and how absurd it would be to undertake to measure his immensity by our weakness and narrow capacity, and so make our faith to conceive and believe what our reason cannot comprehend.

“(4.) Yet our faith doth not cause or make that presence, but apprehends it as most truly and really effected by the word of Christ; and the faith whereby we are said to eat the flesh of Christ, is not that only whereby we believe that he died for our sins (for this faith is required and supposed to precede the sacramental manducation), but more properly, that whereby we believe those words of Christ, ‘This is my body;’ which was St. Austin’s meaning when he said, ‘Why dost thou prepare thy stomach and thy teeth? Believe, and thou hast eaten.’ For in this mystical eating, by the wonderful power of the Holy Ghost, we do invisibly receive the substance of Christ’s body and blood, as much as if we should eat and drink both visibly.

“(5.) The result of all this is, *that the body and blood of Christ are sacramentally united to the bread and wine*, so that Christ is truly given to the faithful; and yet is not to be here considered with sense or worldly reason, but by faith, resting on the words of the Gospel. Now it is said that the body and blood of Christ are joined to the bread and wine, because that in the celebration of the Holy Eucharist the flesh is given together with the bread, and the blood together with the wine. All that remains is, that we should, with faith and humility, admire this high and sacred mystery, which our tongue cannot sufficiently explain, nor our heart conceive.”<sup>1</sup>

<sup>1</sup> Bishop Cosin, *History of Popish Transubstantiation*, chap. iii. § 5, p. 171. (Oxford Trans.)

With respect to the citation of Cosin's from St. Augustine, "Believe and thou hast eaten," it is to be remarked that in the office of the Communion of the Sick the Rubric provides that if for any just impediment (several of which are specified) a man "do not receive the Sacrament of Christ's Body and Blood, the Curate shall instruct him that if he do truly repent him of his sins, and steadfastly believe that Jesus Christ hath suffered death upon the Cross for him, and shed his Blood for his redemption, earnestly remembering the benefits he hath thereby, and giving him hearty thanks therefore, he doth eat and drink the Body and Blood of our Saviour Christ profitably to his soul's health, although he do not receive the Sacrament with his mouth."

Our Prayer-Book follows in this, as in many other respects, the Salisbury Missal, which borrows the words of St. Augustine, "Crede et manducasti."

The insertion of these words in the Salisbury Missal seems to confirm the opinion of Mr. Keble, who suggests in the preface to his edition of Hooker's Works that the Rubric can be meant only "for rare and extraordinary cases, cases as strong in regard of the Eucharist as that of Martyrdom, or the premature death of a well-disposed catechumen, in regard of Baptism."<sup>1</sup>

I return to the language of Cosin:—

"So then (to sum up this controversy by applying to it all that hath been said) it is not questioned whether the Body of Christ be absent from the Sacrament duly administered according to His institution, which we Protestants neither affirm nor believe; for, it being given and received in the Communion, *it must needs be that it is present, though in some manner veiled under the Sacrament, so that of itself it cannot be seen.* Neither is it doubted or disputed whether the bread and wine, by the power of God and a supernatural virtue, be set apart and fitted for a much nobler use, and raised to a higher dignity, than their nature bears; for we confess the necessity of a supernatural and heavenly change, and that the signs cannot become Sacraments but by the infinite power of God, whose proper right it is to institute Sacraments in His Church, being able alone to endue them with virtue and efficacy. Finally, we do not say that our Blessed Saviour gave only the figure and sign of His Body, *neither do we deny a sacramental union of the Body and Blood of Christ with the sacred bread and wine, so that both are really and substantially received together,* but (that we may avoid all ambiguity) we deny that, after the words and prayer of consecration, the bread should remain bread no

<sup>1</sup> *Hooker's Works*, vol. i., preface, p. 87.

longer, but should be changed into the substance of the Body of Christ, nothing of the bread but only the accidents continuing to be what they were before. And so the whole question is concerning the transubstantiation of the outward elements, whether the substance of the bread be turned into the substance of Christ's Body, and the substance of the wine into the substance of His Blood; or, as the Romish doctors describe their transubstantiation, whether the substance of bread and wine doth utterly perish, and the substance of Christ's Body and Blood succeed in their place, which are both denied by Protestants."<sup>1</sup>

... "I was the more willing to be long in transcribing these things at large, out of public confessions of Churches and the best of authors, that it might the better appear how injuriously Protestant divines are calumniated by others unacquainted with their opinions, as though by these words, 'spiritually' and 'sacramentally,' they did not acknowledge a true and well-understood *real* presence and communication of the Body and Blood of Christ *in* the blessed Sacrament. Whereas, on the contrary, they do professedly own it in terms as express as any can be used."<sup>2</sup>

Bishop Forbes, Professor of Hebrew at Oxford, and Bishop of Edinburgh in 1633, wrote a very careful and learned treatise on ecclesiastical matters, which he entitled *Considerationes Modestæ et Pacificæ*. He says:—

"Tutissima et rectissima videtur illorum Protestantium, aliorumque sententia, qui corpus et sanguinem Christi vere, realiter, et substantialiter in Eucharistia adesse, et sumi existimant, imo firmissime credunt, sed modo humano ingenio incomprehensibili, ac multo magis inexorabili, soli Deo noto, et in scripturas nobis non revelato, non quidem corporali, et per oralem sumptionem, sed neque etiam solo intellectu, ac pura puta fide, sed alia ratione, soli Deo, ut dictum est, cognito, illiusque omnipotentiae reliquenda.

"In cœna enim per admirabilem virtutem Spiritus Sancti, invisibiliter substantiæ corporis Christi communicamus, cujus participes efficimur, haud secus ac si visibiliter panem et sanguinem ejus ederemus et biberemus. In baptismo lavacrum est, sed hic alimentum. Baptismus ingressus est in Ecclesiam. Coena nutrimentum in ecclesia et conservatio. Baptismus est salus, Sacramentum corporis Christi vita (ut ait Aug. De Peccatorum Merit. et Remiss. lib. i. c. 24. Vide P. Picherellum de Missa, pag. 208 et 210), et ad mysticam manducationem

<sup>1</sup> *History of Popish Transubstantiation*, chap. iv. § 6, p. 175.

<sup>2</sup> *Ibid.* pp. 168-9.

verum Christi corpus non tantum animæ, sed etiam corpori nostro, spiritualiter tamen, hoc est, non corporaliter, exhibetur, et sane alio ac diverso, *nobisque propinquiori modo, licet occulto*, quam per solam fidem : (ut recte Arch. Spalat. ubi supra, pag. 237.) ‘Et licet Johan. cap. 6, de esu sacramenti non agat, etc. inquit P. Picher., pag. 193, tamen de eadem carnis Christi manducatione spirituali, mysticaque cum Christo conjunctione; illic certe per fidem de conjunctionis initio; in Sacramento autem conjunctionis majore propinquitate, augmento, confirmatione, et strictiore arctioreque vinculo loquitur.’ Et fides qua proprie Christi caro in Eucharistia spiritualiter, h.e. incorporaliter, manducatur non est ea sola, ut quidam dicunt, qua Christus pro peccatis nostris crucifixus et mortuus creditur; Ea enim fides præsupponitur quidem et prærequiritur sacramentali manducationi sed non est ejus propria; sed ea fides est qua creditur verbo Christi dicentis, Hoc est corpus meum, etc. *Credere enim Christum ibi esse præsentem*, etiam carne vivificante, et desiderare eam sumere, nimirum hoc est spiritualiter et recte eam manducare in Eucharistia: unde Aug. super Joan. tract. 25. Quid paras dentem et ventrem? crede et manducasti, etc. ut doctiores norunt et notant.”

“Denique gravissime erratur, quando Christum non esse realiter in Eucharistia, hisce ratiunculis urgetur. Christus est in coelo, loco circumscriptus, etc. igitur non est reipsa vel realiter in Eucharistia. Nemo enim sanæ mentis, Christum e coelo vel e dextra patris descendere visibiliter aut invisibiliter, ut in coena vel siquis localiter adsit, existimat. Fideles omnes unanimi consensu et uno ore profitentur se firmiter retinere articulos fidei, Ascendit in coelos, sedit ad dextram Patris, et modum hujus præsentiae credere se non esse naturalem, corporalem, carnalem, localem per se, etc., absque ulla tamen coelorum desertione, sed supernaturalem, vide scripta Buceri Anglica, pag. 548, etc. Nimis tamen audacter quamplurimi, multis retro sæculis, atque imprimis hoc nostro rixosissimo; nimis inquam audacter, imo plus satis crasse et materialiter de præsentiae modo loquuti sunt, hodieque loquuntur, quem nos infinitæ Dei sapientiæ et potentiæ omnino relinquendum censemus.”<sup>1</sup>

Jackson, President of Corpus Christi College, Oxford, and Dean of Peterborough (1638), perhaps the most learned of our divines, says:—

“This distillation of life and immortality from his glorified human nature, is that which the ancient and orthodoxal Church did mean in their figurative and lofty speeches of Christ's real

<sup>1</sup> *Considerationes Modestæ et Pacificæ*, ed. 1658, pp. 374, 386. (Library of Anglo-Catholic Theology, vol. ii. p. 420.)

presence, or of eating his very flesh and drinking his very blood in the Sacraments. And the sacramental bread is called *his body*, and the sacramental wine *his blood*, as for other reasons, so especially for this, that the *virtue* or influence of his bloody sacrifice—the distinction to which I have adverted must be here borne in mind between the *res* and the *virtus sacramenti*—“is most plentifully and most effectually distilled from heaven unto the worthy receivers of the Eucharist, and unto this point and no further will most of the testimonies reach, which Bellarmine in his books of the Sacraments, or Maldonate in his Comments upon the Sixth of St. John, do quote out of the fathers for Christ’s real presence by transubstantiation; or which Chemnitius, that learned Lutheran, in his books, *De duabus in Christo Naturis* and *De Fundamentis sanctæ Doctrinæ*, doth avouch for consubstantiation. And if thus much had been as distinctly granted to the ancient Lutherans, as Calvin in some places doth, the controversy between the Lutheran and other reformed Churches had been at an end when it first began; both parties acknowledging St. Cyril to be the fittest umpire in this controversy.”<sup>1</sup>

One of the most important writings of St. Cyril, to whom Dr. Jackson refers, is his letter written to Nestorius, which was afterwards the basis of the decree of the Council of Ephesus (A.D. 431), which Council condemned the heresy of Nestorius with respect to the human nature of our Lord. One of the arguments adduced in this letter for the true doctrine is derived from the admitted presence and partaking of our Lord’s body in the holy Eucharist; and the distinction is established between the body of our Lord which is life-giving, and the body of a man, however holy, which is not.

The whole passage is as follows. It is one of those collected by the learned Dr. Routh in his work intended to show the close connection between our Church and the Primitive Church, and deserves careful consideration:—

Ἀναγκαίως δὲ καὶ κείνῳ προσθήσομεν· καταγγέλλοντες γὰρ τὸν κατὰ σάρκα θάνατον τοῦ μονογενοῦς Υἱοῦ τοῦ Θεοῦ, τουτέστιν Ἰησοῦ Χριστοῦ, τὴν τε ἐκ νεκρῶν ἀναβίωσιν, καὶ τὴν εἰς οὐρανοὺς ἀνάληψιν ὁμολογούντες, τὴν ἀναίμακτον ἐν ταῖς Ἐκκλησίαις τελοῦμεν θυσίαν· πρόσμιέν τε οὕτω ταῖς μυστικαῖς εὐλογίαις καὶ ἁγιαζόμεθα, μέτοχοι γενόμενοι τῆς τε ἁγίας σαρκὸς, καὶ τοῦ τιμίου αἵματος τοῦ πάντων ἡμῶν Σωτῆρος Χριστοῦ· καὶ οὐχ ὡς σάρκα κοινὴν δεχόμενοι· μὴ γένοιτο· οὔτε μὴν ὡς ἀνδρὸς ἡγιασμένου, καὶ συναφθέντος τῷ Λόγῳ κατὰ τὴν ἐνότητα τῆς ἀξίας, ἡγοῦν ὡς θεῖαν ἐνοίκησιν ἐσχηκότος, ἀλλ’ ὡς ζωοποιὸν ἀληθῶς, καὶ ἰδίαν αὐτοῦ τοῦ Λόγου. Ζωὴ γὰρ ὦν κατὰ φύσιν ὡς Θεὸς, ἐπειδὴ

<sup>1</sup> *Jackson’s Works*, vol. x. pp. 41-2. (Oxford Edition, 1844.)

γέγονεν ἔν πρὸς τὴν ἑαυτοῦ σάρκα, ζωοποιὸν ἀπέφηεν αὐτὴν ὥστε καὶ λέγει πρὸς ἡμᾶς, ‘ Ἀμὴν ἀμὴν λέγω ὑμῖν, ἐὰν μὴ φάγητε τὴν σάρκα τοῦ Υἱοῦ τοῦ ἀνθρώπου, καὶ πίνητε αὐτοῦ τὸ αἷμα, οὐχ ὡς ἄνθρωπον τῶν καθ’ ἡμᾶς ἐνδὸς καὶ αὐτὴν εἶναι λογιούμεθα, πῶς γὰρ ὁ ἄνθρωπος σὰρξ ζωοποιὸς ἔσται κατὰ φύσιν τὴν ἑαυτῆς; ἀλλ’ ὡς ἰδίαν ἀληθῶς γενομένην τοῦ δι’ ἡμᾶς καὶ υἱοῦ καὶ ἀνθρώπου γεγονότος τε καὶ χρηματίσαντος. (Ζ.)<sup>1</sup>

The Council of Ephesus is one of the “first Four General Councils” referred to in 1 Eliz. c. 1. § 35.

Bishop Ken, whose name needs no introduction, in his exposition of the Church Catechism, uses this language:—

As to “Parts outward.”

“Glory be to Thee, O adorable Jesus, who, under the outward and visible part, the ‘bread and wine,’ things obvious and easily prepared, both which ‘thou hast commanded to be’ received, dost communicate to our souls the mystery of divine love, the ‘inward and invisible grace,’ Thy own most blessed ‘body and blood, which are verily and indeed taken and received by the faithful in Thy Supper;’ for which all love, all glory, be to Thee.” . . .

As to “Real Presence.”

“I believe, O crucified Lord, that ‘the bread which we break,’ in the celebration of the Holy Mysteries, is the communication of Thy body, and the cup of blessing which we bless is the communication of Thy blood; and that Thou dost as effectually and really convey Thy body and blood to our souls by the bread and wine, as Thou didst Thy Holy Spirit, by Thy breath to Thy disciples; for which all love, all glory, be to Thee.

“Lord, what need I labour in vain to search out the manner of Thy mysterious presence in the Sacrament, when my love assures me Thou art there? All the faithful who approach Thee with prepared hearts, they well know Thou art there; they feel the virtue of divine love going out of Thee to heal their infirmities and to inflame their affections; for which all love, all glory, be to Thee.

“O holy Jesus, when at Thy altar I see the bread broken and the wine poured out, ‘O teach me to discern Thy body there;’ O let those sacred and significant actions create in me a most lively remembrance of Thy sufferings; how Thy most blessed body was scourged, and wounded, and bruised, and tormented; how Thy most precious blood was shed for my sins, and set all my powers on work to love Thee, and to celebrate Thy love in thus dying for me.”<sup>2</sup>

<sup>1</sup> Routh, *Scriptorum Ecclesiasticorum Opuscula*, vol. ii. p. 25.

<sup>2</sup> Ken's *Prose Works*, p. 324.



Bishop Jeremy Taylor, whose authority was much relied on by counsel for the promoter, says :—

“Some so observe the literal sense of the words that they understand them also in a natural. Some so alter them by metaphors and preternatural significations, that they will not understand them at all in a proper way. We see it, we feel it, we taste it, and we smell it to be bread; and by philosophy we are led into a belief of that substance whose accidents these are, as we are to believe that to be fire which burns, and flames, and shines. But Christ also affirmed concerning it, *This is my body*; and if faith can create an assent as strong as its object is infallible, or can be as certain in its conclusions as sense is certain in its apprehensions, we must at no hand doubt but that it is Christ's body. Let the sense of that be what it will, so that we believe those words and (whatsoever that sense is which Christ intended) that we no more doubt in our faith than we do in our sense, and then our faith is not reproveable. It is *hard* to do so much violence to our *sense* as not to think it *bread*; but it is more *unsafe* to do so much violence to our *faith* as not to believe it to be Christ's Body. But it would be considered that no interest of religion, no saying of Christ, no reverence of opinion, no sacredness of the mystery is disavowed if we believe both what *we hear* and what *we see*. He that believes it to be *bread*, and yet *verily* to be *Christ's Body*, is only tied also by implications to believe God's omnipotence, that he who affirmed it can also verify it. And they that are forward to believe the change of substance can intend no more, but that it be believed verily to be the Body of our Lord. And if they think it impossible to reconcile its being bread with the verity of being Christ's Body, let them remember that themselves are put to more difficulties, and to admit of more miracles, and to contradict more sciences, and to refuse the testimony of sense, in affirming the special manner of transubstantiation. And therefore it were safer to admit the words in their first sense, in which we shall no more be at war with reason, nor so much with sense, and not at all with faith. And for persons of the contradictory persuasion, who to avoid the natural sense affirm it only to be figurative, since their design is only to make this Sacrament to be Christ's Body in the sense of *faith*, and not of *philosophy*, they may remember that its being really present does not hinder, *but that all that reality may be spiritual*; and if it be Christ's Body, so it be not affirmed such in a natural sense and manner, it is still only the object of faith and spirit; and if it be affirmed only to be spiritual, there is then no danger to faith in admitting the words of Christ's institution, *This is my Body*. I suppose it

to be a mistake to think whatsoever is real must be natural, and it is no less to think spiritual to be only figurative; that is too much, and this is too little; philosophy and faith may well be reconciled, and whatsoever objection can invade this union may be cured by modesty.”<sup>1</sup>

And again:—

“In the Sacrament that body which is reigning in heaven is exposed upon *the table of blessing*, and his body which was broken for us is now broken again, and yet remains impassible. Every consecrated portion of bread and wine does exhibit Christ entirely to the faithful receiver, and yet Christ remains one, while He is wholly ministered in ten thousand portions; so long as we call these mysterious, and make them intricate to exercise our faith, and to represent the wonder of the mystery, and to increase our charity, our being inquisitive into the abyss can have no evil purposes. God hath instituted the rite in visible symbols to make the secret grace as presential and discernible as it might, that by an instrument of sense our spirits might be accommodated as with an exterior object to produce an internal act. But it is the prodigy of a miraculous power, by instruments so easy to produce effects so glorious; this then is the object of *wonder and adoration*.”<sup>2</sup>

And again:—

“This may suffice for the word ‘real,’ which the English Papists much use, but, as it appears, with much less reason than the sons of the Church of England; and when the Real Presence is denied, the word ‘real’ is taken for ‘natural,’ and does not signify ‘transcender,’ or in his just and most proper signification. But the word ‘substantialiter’ is also used by Protestants in this question, which I suppose may be the same with that which is in the Article of Trent, ‘*Sacramentaliter præsens Salvator substantia sua nobis adest*,’ ‘in substance, but after a Sacramental manner;’ which words, if they might be understood in the sense in which the Protestants use them, that is really, truly, without fiction, or the help of fancy, but ‘in rei veritate,’ so, as Philo calls spiritual things *ἀναγκαϊόταται οὐσίαι*, ‘most necessary, useful, and material substances,’ it might become an instrument of a united confession.”

“One thing more I am to note in order to the same purposes; that, in the explication of this question, it is much insisted upon that it be inquired whether, when we say we believe Christ’s Body to be ‘really’ in the Sacrament, we mean, ‘that Body, that Flesh, that was born of the Virgin

<sup>1</sup> *Works*, Heber’s Edition, vol. iii. pp. 291-293.

<sup>2</sup> *Ibid.* p. 294.

Mary,' that was crucified, dead, and buried? I answer, I know none else that He had, or hath; there is but one Body of Christ, natural, and glorified; but he that says that Body is glorified which was crucified, says it is the same body, but not after the same manner; and so it is in the Sacrament; we eat and drink the Body and Blood of Christ that was broken and poured forth; for there is no other body, no other blood of Christ; but though it is the same which we eat and drink, yet it is in another manner; and, therefore, when any of the Protestant divines, or any of the fathers, deny that Body which was born of the Virgin Mary, that which was crucified, to be eaten in the Sacrament,—as Bertram, as St. Jerome, as Clemens Alexandrinus, expressly affirm; the meaning is easy;—they intend it is not eaten in a natural sense; and then calling it 'corpus spirituale,' the word 'spiritual' is not a substantial predication, but is an affirmation of the manner, though in disputation it be made the predicate of a proposition, and the opposite member of a distinction. 'That Body which was crucified, is not that Body that is eaten in the Sacrament,'—if the intention of the proposition be to speak of the eating it in the same manner of being; but 'that Body which was crucified, the same Body we do eat,'—if the intention be to speak of the same thing in several manners of being and operating; and this I noted, that we may not be prejudiced by words, when the notion is certain and easy; and thus far is the sense of our doctrine in this article."<sup>1</sup>

And again:—

"And certainly he could on no pretence have challenged the appellative of Christian, who had dared either himself to invade the holy rites within the cancels, or had denied the power of celebrating this dreadful mystery to belong only to *sacerdotal ministrations*. For either it is said to be but common bread and wine, and then, if that were true indeed, anybody may minister it, but then they that say so are blasphemous, they count the Blood of the Lord τὸ αἷμα τῆς διαθήκης (as St. Paul calls it in imitation of the words of Institution), the Blood of the Covenant or New Testament, a profane or common thing; they discern not the Lord's Body; they know not that the bread which is broken is the communication of the Lord's Body. But if it be a holy, separate, or divine and mysterious thing, who can make it (ministerially I mean) and consecrate or sublime it from common and ordinary bread, but a consecrate, separate, and sublime person?"<sup>2</sup>

<sup>1</sup> *Works*, Heber's edition, vol. ix. p. 427.

<sup>2</sup> *Ibid.* 431.

<sup>2</sup> *Clerus Domini*. The Divine Institution and Necessity of the Office

And further :—

“For certainly there is not a greater degree of power in the world than to remit and retain sins, and to consecrate the sacramental symbols into the mysteriousness of Christ’s Body and Blood; nor a greater honour than that God in heaven should ratify what the priest does on earth, and should admit him to handle *the sacrifice of the world*, and to *present the same which in heaven is presented* by the eternal Jesus.”<sup>1</sup>

Dr. Hey, Norrisian Professor of Divinity, in his lectures on the Articles, observes :—

“*Latimer*, in the Disputation at Oxford in 1554 (or in the *Paper* which he gave in), said that he maintained the *real* presence of Christ in the Eucharist, but not the *corporal* (see Fox or Collier, A.D. 1554). Archbishop Secker (Lect. vol. ii. p. 251) says the Church has always acknowledged the *real* presence. Yet Wheatly (p. 320) says it (real essential presence of Christ’s natural flesh and blood) was not allowed at first; in the time of Edward VI. it seemed to approach so near transubstantiation. Fulke, on Heb. i. 6, denies reality of Christ’s *corporal* presence. Queen Elizabeth seems to have been willing to *comprehend* as many as possible in the new English Church; and with that view to have endeavoured to use a language which all might adopt who did not profess transubstantiation in the strictest sense, and which might nevertheless be used by those who did not admit any presence of Christ in the Eucharist perfectly corporal. Such language would comprehend all Lutherans and some Papists. I think this remark will be sufficient to account for the change of the expressions in the 28th of our present Articles (on which Bishop Burnet speaks judiciously), and for the language in the second Book of Homilies, both as to the word ‘*Incorporation*’ and the insisting on *Faith* and *spiritual* eating of the Sacrament.”<sup>2</sup>

Bishop Pearson, in his great work on the Creed, observes :—

“Vain, therefore, was that old conceit of Eutyches, who thought the union to be made so in the natures, that the humanity was absorbed and wholly turned into the Divinity, so that by that transubstantiation the human nature had no longer being. And well did the ancient fathers, who opposed this heresy, make use of the Sacramental union between the bread and wine and the body and blood of Christ, and thereby showed that the human nature of Christ is no more really converted into the Divinity, and so ceaseth to be the human nature, than the substance of the bread and wine is really con-

Ministerial, written by the especial Command of King Charles I., sec. 5. Heber’s edition, vol. xiv. p. 456.

<sup>1</sup> *Ibid.* p. 459.

<sup>2</sup> *Hey’s Lectures in Divinity*, vol. iv. p. 331.

verted into the substance of the body and blood, and thereby ceaseth to be both bread and wine; from whence it is by the way observable, that the Church in those days understood no such doctrine as that of transubstantiation."<sup>1</sup>

Saravia was successively Prebendary of Gloucester, Canterbury, and Westminster. He was in 1607 one of the translators of the Bible. He lived on terms of intimate friendship with Hooker, as Isaac Walton relates. He wrote in Latin a treatise on the Holy Eucharist, which has been recently translated. He says:—

"In a Sacrament there be three things to be considered which be severally to be distinguished. The outward visible sign, and the invisible and heavenly thing united sacramentally to the sign. The third thing, that which floweth from them, is the benefit of the Sacrament. Concerning those two parts Augustine saith, 'What we say is this—what we endeavour by every means to prove is this—namely, that the sacrifice of the Church is made up of two things, consisteth of two things, the visible form of the Elements and the invisible Flesh and Blood of our Lord Jesus Christ—that is of the 'Sacramentum,' and of the 'Res Sacramenti'—that is, the Body of Christ. Now orthodox divines declare that the virtue of the Sacrament is a different thing from the Sacrament itself—that is, a different thing from those two parts of which the Sacrament is made up. Augustine writeth upon the Gospel of St. John, 'For now also,' he saith, 'we receive the spiritual food; but the Sacrament is one thing, the virtue of the Sacrament is another.' The same father in the same place: 'If any one shall eat of It, he shall not die; but this pertaineth to the virtue of the Sacrament, not to the visible Sacrament.' Therefore the Sacrament is to be considered apart by itself, as it consisteth of the visible form of the elements and the invisible Flesh and Blood of our Lord Jesus Christ."<sup>2</sup>

Bishop Andrewes again, in his Apology for the answer which I have already cited to Bellarmine, says:—

"Now Ambrose says that the nature is changed; and so indeed it is. For, as the Cardinal knows full well, the nature of the element is one, that of the Sacrament is another. Nor do we deny that the nature of the element is changed by the benediction, so that the bread, as soon as consecrated, is no longer the bread as nature formed it, but as the benediction has consecrated it; and by consecration also changed."<sup>3</sup>

"Again, that grave author (who bears the name of Cyprian,

<sup>1</sup> Bishop Pearson on the Creed, article iii. vol. i. p. 288. (Burton's edition.)

<sup>2</sup> *Treatise of the Holy Eucharist*, p. 23. London, 1855.

<sup>3</sup> *Responsio ad Apologiam Card. Bellarmine*, p. 263.

yet is not Cyprian) says, that 'the bread is changed in nature, not in appearance;' which we deny not, but deprecate the Cardinal's gloss upon it, explaining 'the nature, *i.e.* the substance; and the appearance, *i.e.* the substance.' For, when the Almighty Power of the Word is added, the nature is changed, so that what was before a bare element now becomes a divine Sacrament, retaining, however, its former substance. This is taught by the words which immediately succeed, which are part of the same sentence, although by you they are always not very honestly cut out. As in the person of Christ both the humanity was manifest and the divinity concealed, so the divine essence, the visible Sacrament, enters. Verily, the conjunction between the visible Sacrament and the invisible subject matter of the Sacrament is the same as that which exists between the humanity and the divinity of Christ, where, unless you are unwilling to savour of the doctrine of Eutyches, the humanity is not transubstantiated into the divinity."<sup>1</sup>

"Both of them, Gelasius and Theodoret, argue against Eutyches; and from their testimony it is clear that the transmutation which takes place in the Sacrament is not a change of substance. I add also Augustine—'This is what we assert and approve of by all means, that the sacrifice of the Eucharist consists of two things, the visible appearance of the elements and the invisible Flesh and Blood of our Lord Jesus Christ, of the Sacrament and the subject matter of the Sacrament, even as the person of Christ is evidently made up of God and man; since Christ is truly God and truly man. For everything contains the nature and truth of these things of which it is made up. But the Sacrament of the Church is made up of two things, viz., the Sacrament and the subject matter of the Sacrament, that is, the Body of Christ.'"<sup>2</sup>

Brevint, who died Dean of Lincoln about 1695, published a work called *Christian Sacrament and Sacrifice*, in which he says:—

"Hence it appears what crime it is not to discern the Lord's Body. It is to do worse than Esau did, who sold his birthright for a trifle. It is to value at the same rate the anointing of a prophet and the composition of a perfumer. It is to take the Lord's Body for a despicable morsel of bread; in a word, it is to perform the action of a beast that devours but the gross and earthy matter of this Sacrament, and to have nothing of a Christian or rational creature who elevates his soul to that Body which by Christ's institution it represents, and to the grace of that body which it promises. For, since the proper essence of sacred signs or Sacraments consists not in what they

<sup>1</sup> *Responsio ad Apologiam Card. Bellarmine*, p. 265.

<sup>2</sup> *Ibid.* p. 266.

are in their nature, but in what they signify by Divine institution, hence it happens infallibly that when the Sacraments are abused, the injury must needs light not upon them in their own natural being, Bread, Wine, and Water, which upon this account are not at all considerable, but upon the Holy Mysteries, the Body and Blood of Christ Himself who is the main object of their formal Being, that is, their signification. And therefore the Apostle speaks most exactly when he says that whosoever eats of this bread unworthily, doth not discern or doth not sanctify, but uses as a common and profane thing the very Body of Jesus Christ.”<sup>1</sup>

Thorndike, Master of Sidney Sussex College, Prebendary of Westminster, one of the Commissioners at the Savoy Conference for revising the Book of Common Prayer, in his *Laws of the Church*, says:—

“But if I allow them that make it more than such a sign to have departed from a pestilent conceit, and utterly destructive to Christianity, I cannot allow them to speak things consequent to their own position when they will not have these words to signify that the elements are the Body and Blood of Christ *when they are received*, but *become so upon being received with living faith*; which will allow no more of the Body and Blood of Christ to be in the Sacrament than out of it. For the act of living faith importeth the eating and drinking of the Flesh and Blood of Christ, no less without the Sacrament than in it. . . . If ‘This is my Body,’ ‘This is my Blood,’ signifieth no more than ‘This is the sign of my Body and Blood,’ then is the Sacrament of the Eucharist a mere sign of the Body and Blood of Christ, without any promise of spiritual grace; seeing that, being now a Sacrament, by being become a Sacrament it is become no more than *a sign* of the Body and Blood of Christ, which, though a living faith spiritually eateth and drinketh when it receives the Sacrament, yet it should have done no less without receiving the same.”<sup>2</sup>

“As the eating and drinking of Christ’s Flesh spiritually by faith presupposes the Flesh of Christ crucified and His Blood poured forth, so must the eating of It in the Sacrament presuppose the being of It in the Sacrament, to wit, by the being and becoming of It a Sacrament; unless a man can spiritually eat and drink the Flesh and Blood of Christ in and by the Sacrament, which is not in the Sacrament when he eats and drinks it, but by his eating and drinking of it comes to be there.” . . .

<sup>1</sup> *Christian Sacrament and Sacrifice*, s. v. s. 9.

<sup>2</sup> *Laws of the Church*, book iii. chap. ii. p. 6, 1st Edit. 1659.

"But if the Flesh and Blood of Christ be not there by the virtue of the consecration of the elements into the Sacrament, then cannot the Flesh of Christ and His Blood be said to be eaten and drunk in the Sacrament, which are not in the Sacrament by being a Sacrament, but in him that eats and drinks it. For that which he finds to eat and drink in the Sacrament cannot be said to be in the Sacrament, because it is in him that spiritually eats and drinks it by faith. Either, therefore, the Flesh and Blood of Christ cannot be eaten and drunk in the Eucharist, or it is necessarily in the Sacrament *when* It is eaten and drunk in it; in which if It were not It could not be eaten and drunk in it."<sup>1</sup>

"If these things be true, it will be requisite that we acknowledge a change to be wrought in the elements by the consecration of them into the Sacrament. For how should they come to be *that which they were not* before, to wit, *the Body and Blood of Christ*, without any change? And in regard of this change the elements are no more called by the name of their nature and kind after the consecration, but by the name of that *which they are become*. Not as if the substance thereof were abolished, but *because it remains no more considerable to Christians*; who do not, nor are to look upon, this Sacrament with any account of what it may be to the nourishment of their bodies by the nature of the elements, but what it may be to the nourishment of their souls by the Spirit of God assisting in and with His Flesh mystically present in it. But this change *consisting in the assistance of the Holy Ghost which makes the elements in which it dwells the Body and Blood of Christ*, it is not necessary that we acknowledge the bodily substance of them to be any way abolished."<sup>2</sup>

And again:—

"It is not here to be denied that all ecclesiastical writers do with one mouth bear witness to the presence of the Body and Blood of Christ in the Eucharist, neither will any of them be found to ascribe it to *anything but the consecration*, or that to any faith but that upon which the Church professeth to proceed to the celebrating of it. And upon this account, when they speak of the elements supposing the consecration to have passed upon them, they always call them by the name, not of their bodily substance, but of the Body and Blood of Christ *which they are become*."<sup>3</sup>

And again:—

"And upon these premises I conclude, that as it is by no means to be denied that the elements are really changed,

<sup>1</sup> *Laws of the Church*, book iii. chap. ii. p. 8.

<sup>2</sup> *Ibid.* chap. iii. p. 16.

<sup>3</sup> *Ibid.* chap. iv. p. 30.



translated, turned and converted into the Body and Blood of Christ (so that whoso receiveth them with a living faith is spiritually nourished by the same, he that with a dead faith is guilty of crucifying Christ), yet is not this change destructive to the bodily substance of the elements, but cumulative of them with the spiritual grace of Christ's Body and Blood, so that the Body and Blood of Christ in the Sacrament turns to the nourishment of the body, whether the Body and Blood in the truth turn to the nourishment or the damnation of the soul."<sup>1</sup>

From Bramhall, who died Archbishop of Armagh in 1663, a prelate of considerable erudition, I cite these passages:—

"Having viewed all your strength with a single eye, I find not one of your arguments that comes home to Transubstantiation, but only to a true Real Presence, which no genuine son of the Church of England did ever deny, no, nor your adversary himself. Christ said, 'This is My Body;' what he said we stedfastly believe. He said not, after this or that manner, *neque con, neque sub, neque trans*. And therefore we place it among the opinions of the schools, not among the articles of our Faith. The Holy Eucharist, which is the Sacrament of peace and unity, ought not to be made the matter of strife and contention."<sup>2</sup>

And again:—

"Abate us Transubstantiation, and those things which are consequent of their determination of the manner of Presence, and we have no difference with them in this particular. They who are ordained priests ought to have power to consecrate the Sacrament of the Body and Blood of Christ, that is, to make them present."<sup>3</sup>

Sparrow, Bishop of Exeter and of Norwich, died in 1685. He was also one of the Commissioners for revising the Prayer-Book. In his "*Rationale*" of that book he has these words:—

"Next is the Consecration. So you shall find in Chrysostom and Cyril, last cited. Which consecration consists chiefly in rehearsing the words of our Saviour's institution, This is My Body, and This is My Blood, when the bread and wine is present upon the Communion Table. 'The Holy Sacrament of the Lord's Supper,' says S. Chrysostom, 'which the Priest now makes, is the same that Christ gave to His Apostles.' . . . 'Christ is present at the Sacrament now, that first instituted it. He consecrates this also: it is not man that makes the Body and Blood of Christ by consecrating the holy elements, but Christ that was crucified for us. The words are pronounced by the

<sup>1</sup> *Laws of the Church*, book iii. chap. iv. pp. 33, 34.

<sup>2</sup> *Works*, fol. ed., p. 15.

<sup>3</sup> *Ibid.* p. 485.

mouth of the Priest, but the elements are consecrated by the power and grace of God. "This is," saith He, "My Body:" by this word the bread and wine are consecrated.'

"When the Priest hath said at the delivery of the Sacrament, The Body of our Lord Jesus Christ which was given for thee, preserve thy body and soul unto everlasting life, the communicant is to answer Amen; by this Amen, professing his faith of the Presence of Christ's Body and Blood in that Sacrament."<sup>1</sup>

Tillotson, who died Archbishop of Canterbury in 1694, and was of a different school of divinity from the last author, nevertheless says:—

"I deny not but that the Fathers do, and that with great reason, very much magnifie the wonderfull mystery and efficacy of this Sacrament, and frequently speak of a *great Supernatural change made by the Divine benediction*, which we also readily acknowledge."<sup>2</sup>

Yardley, Fellow of St. John's College, Cambridge, who died Archdeacon of Cardigan in 1770, an authority cited by Bishop Mant, says:—

"After the consecration of the Elements immediately follow the reception and distribution of them, which continue still in their natural substance of bread and wine, though they are changed in their value and efficacy into the sacramental Body and Blood of Christ."<sup>3</sup>

Beveridge, who died Bishop of St. Asaph in 1708, and wrote a well-known *Exposition of the Thirty-nine Articles*, says:—

"Hence also it is, that our Church requires us to receive the Holy Sacrament kneeling, not out of any respect to the creatures of bread and wine, but to put us in mind that Almighty God, our Creator and Redeemer, the only object of all religious worship, is there specially present, offering His own Body and Blood to us, that so we may act our faith in Him, and express our sense of his goodness to us, and our unworthiness of it, in the most humble posture that we can. And, indeed, could the Church be sure that all her members would receive as they ought with faith, she need not to command them to receive it kneeling, for they could not do it any other way. For how can I pray in faith to Almighty God, to preserve both my body and soul to everlasting life,

<sup>1</sup> *Rationale upon the Book of Common Prayer*, pp. 216, 223. Ed. Oxford, 1840.

<sup>2</sup> *Discourse against Transubstantiation. Works* (ed. 1686), vol. xvii. p. 320.

<sup>3</sup> Cited in Mant's *Book of Common Prayer* (ed. 8), p. 368.

and not make my body as well as soul bow down before Him? How can I by faith behold my Saviour coming to me, and offering me His own Body and Blood, and not fall down and worship Him? How can I by faith lay hold upon the pardon of my sins, as there sealed and delivered to me, and receive it any otherwise than on my knees? I dare not, I cannot, do it; and they who can, have too much cause to suspect that they do not discern the Lord's Body, and therefore cannot receive it worthily. Be sure, our receiving the blessed Body and Blood of Christ, as the Catholic Church always did, in an humble and *adoring* posture, is both an argument and excitement of our faith in Him. By it we demonstrate that we discern the Lord's Body, and believe Him to be present with us in a particular sacramental sense, and by it we excite and stir up both ourselves and others to act our faith more steadfastly upon Him, in that by our *adoring* Him, we actually acknowledge Him to be God as well as man; and therefore on whom we have all the reason in the world to believe and trust for our salvation."<sup>1</sup>

I cannot more fitly conclude this catalogue than by a reference to the high authority of the present Bishop of Salisbury, Dr. Moberly, who, in one of his Bampton Lectures, observes upon the Holy Eucharist as follows:—

"In order to constitute its complete character according to the Divine pattern of its institution, it absolutely requires two things. First, there must be the consecration of the elements by the priest, the organ of the priestly Church, empowered by sacred ordinance to do that solemn and indispensable portion of the joint act which none else may presume to exercise or intrude upon; for it is no common or ordinary work which he has to do. It is no light thing that by the acts that he organically does, and the words which he organically utters, *the spiritual presence of the Lord is so brought down upon the elements of bread and wine, as that to the faithful they become verily and indeed, however invisibly and mysteriously, the Body and Blood of Christ.*"<sup>2</sup>

Again:—

"There has never been a question of the absolute confinement of the power of consecrating the bread and wine to their mysterious efficacy of becoming to the faithful, and to the Church of the faithful, the Body and Blood of the Lord, to the ordained clergy."<sup>3</sup>

<sup>1</sup> Bishop Beveridge on Frequent Communion, p. 208 (p. 431 of ed. 1858).

<sup>2</sup> Moberley's Bampton Lectures, pp. 176, 177.

<sup>3</sup> *Ibid.* p. 177.

Again :—

No doubt some of the ancients, as, for example, St. Chrysostom, in the treatise on Priesthood, use very strong and remarkable language on this part of the subject. I venture to think that as we should not have scrupled to use similar language if we had lived before the Roman theory of Transubstantiation had been elaborated into all its train of evil and superstitious consequences, so would he in all probability have guarded his expressions had he been writing in later days, when that philosophical theory had been invented and made to take the place of the simple doctrine of the real, and as *in our modern mode of speech we call it, the objective presence of the Body and Blood of Christ in the sacred elements.*

“Under the *outward and visible form of bread and wine* we believe that the Body and Blood of our Lord and Saviour Jesus Christ are given, taken, and received; and we believe that that Divine food, according to the sacred teaching of our own Liturgy in this respect, imparts to every one of those who receive it with true penitent heart and lively faith, these nine inestimable blessings.”<sup>1</sup>

Again :—

“That Divine nourishment is the Body and Blood of Christ. It is hardly possible, brethren, in these days of division and disputation on all the most sacred articles of the faith, to pass by, quite without notice, the extreme diversity of opinion of churches and doctors on this most sacred, and in its general terms unquestioned, doctrine, but it suits little with my purpose to dwell upon such diversities at any length.”

And then this learned prelate adds the following words, which deserve the most careful attention, both from the great weight due to the authority which uttered them, and from their bearing upon the present case :—

*“I will therefore only say that the ancient doctrine of the Church, and, as I read it, the unquestionable doctrine of the Church of England, is that the spiritual presence of the Body and Blood of our Lord in the Holy Communion is objective and real. I do not see how we can consent, as with Hooker and Waterland, to limit authoritatively that presence to the heart of the receiver; for the words of the institution (and these are cases in which we are rigidly and absolutely bound to the exact words of the revelation), the words, I say, of the Lord in the institution, seem to forbid such a gloss.”*<sup>2</sup>

<sup>1</sup> *Moberley's Bampton Lectures*, pp. 173, 4.

<sup>2</sup> *Ibid.* p. 171.

*Real Presence.—The use of the terms Objective and Subjective.*

During the course of the argument the use of the phrase *objective* Presence was demurred to by counsel for the promoter.

It was said, I believe quite truly, that the phrase had been recently introduced into treatises of English theology ; a remark which might also be made with respect to the introduction of it into systems of philosophy. I mean to speak with proper diffidence on this subject, but the fact seems to be by no means conclusive against the use of it in either science.

Philosophy and theology have derived these terms, *objective* and *subjective*, from the schoolmen, and in both sciences they express a distinction which, perhaps, no other terms can adequately convey.

*Subjective*, in both sciences, denotes, I believe, that which belongs to the mind or soul of man, the thinking conscious subject.

*Objective* denotes that which belongs to what is without or external to the mind or soul of man, the object known, perceived, or believed to exist. It signifies what is real in opposition to what is ideal ; what exists in nature in contrast to what exists in thought ; what has a substantive, independent existence in fact, not a relative dependent existence in the mind or soul of the individual.<sup>1</sup>

Thus the phrase *subjective* Presence would be used, I presume, to mean that the presence of Christ is in the act of reception by the communicant of the consecrated elements themselves.

The phrase *objective* Presence would be used, I presume, to mean that the presence of Christ is mysteriously, but really, in the consecrated elements apart from the act of reception by the communicant.

The use of these phrases cannot be imposed as a necessary condition of resolving the question as to the mode of the Presence. It seems to me that the language of the present Bishop of Carlisle on this point deserves attention :—

“We see it and hear it, for instance, continually and very warmly discussed, whether the Presence of Christ in the Sacrament be an *objective* or a *subjective* Presence. It is taken for granted that it must be either the one or the other ; it must either be *objective*, that is, independent of the mind contemplating it, or else it must be *subjective*, that is, dependent upon the contemplating mind. Now it may seem at first sight that this view of the question is exhaustive ; and yet whichever horn of

<sup>1</sup> *Sir William Hamilton's Lectures*, vol. i. pp. 159, 160.

the dilemma you take you arrive at consequences not easily admissible. Is it conceivable that the Presence of Christ should be altogether independent of the worshipper? If so, do you not degrade that Presence, and run the risk of confounding the Sacrament with a charm, something that can produce results without the accompanying energy of a true and lively faith on the part of those who receive it? On the other hand, is it conceivable that the Presence of Christ should be altogether dependent upon the spirit of the worshipper, so that there should be no absolute and independent truth and meaning in the words of our Lord when he said, 'This is My Body,' and 'This is My Blood'? I cannot accept either horn of the dilemma. And if it be asked, What then will you do? I reply by denying that any one has a right to submit the words of Christ to any dilemma of the kind. What right have we to say that His Presence must be either *objective* or *subjective*? Why may it not in some sense be both? Or how do we know that that mysterious Presence of which we speak is capable of being described under such a formula at all?"<sup>1</sup>

However recently the terms *objective* and *subjective* may have been introduced into our theology, and whether the introduction of them has or has not been necessitated or justified by increased laxity and confusion of speech upon the subject of the Holy Eucharist, they are certainly now supported by very high authority, even if we confine our consideration to the writers of our own country. They have been adopted, as will be seen in the citations which I have made, by some of the most erudite and esteemed of our own divines. And in my opinion it was legally competent to Mr. Bennett to make use of them.

*Real Presence.—Use of the phrase "Under the forms of Bread and Wine."*

Great objection was taken by the counsel for the promoter to the phrase "under the form of Bread and Wine," which it was contended introduced teaching at variance with the Formularies of our Church. This form of expression has been used in our Formularies as applicable to the substances of Bread and Wine remaining unchanged. They were so used in the Articles of 1536, and in the "Institution of a Christian Man" in 1537. In the Six Articles a direct statement of transubstantiation took their place. They do not appear in the "Necessary Erudition" of 1543. After a lapse of four years they reappear under the auspices of Cranmer and other

<sup>1</sup> *Dean Goodwin's Sermons*, 1869, p. 112.

Bishops at the end of the first book of the Homilies, where it is said, "Hereafter shall follow sermons of the Nativity, Passion, Resurrection, and Ascention of our Saviour Christ, of the due receiving of His Blessed Body and Blood under the form of Bread and Wine." And it is not unimportant to observe, that, early in the reign of Elizabeth, the Bishops advert to this statement, for in their title to the second book of the Homilies they speak "of such matters as were promised *and entituled* in the former book of Homilies." And in Queen Elizabeth's Primer of 1559 we find the prayer which begins "Our Saviour and Redeemer, Jesu Christ, which in Thy last Supper with Thine Apostles didst deliver Thy Blessed Body and Blood under the form of Bread and Wine." The first book of Homilies has undergone two revisions, and the statement "under the form of Bread and Wine" remains unchanged up to the present time.

Ratramn, it will be seen, adopted pretty much the same form of expression:—

"At quia confitentur et corpus et sanguinem Christi esse, nec hoc esse potuisse, nisi facta in melius commutatione; neque ista commutatio corporaliter, sed spiritualiter facta sit necesse est, ut jam figurate facta esse dicatur quoniam sub *velamento corporei panis corporeique vini spirituale corpus Christi spiritualisque sanguis existit.*"<sup>1</sup>

It is remarkable that the followers of Wickliffe and the Lollards, who were burnt in the reigns of Henry the Fourth and Fifth, under the authority of the inhuman statute then enacted, appear to have maintained "the Sacrament of Christ's flesh and his blood in *form of bread and wine*," and to have been burnt for refusing to acknowledge the corporal presence, and to declare that after the words of consecration the material bread and wine no longer existed.<sup>2</sup>

To Sir John Oldcastle (Lord Cobham) in 1414, the inquisitors put the Roman proposition as to the Presence, and their question on it, as follows:—

<sup>1</sup> *Bertrami de Corp. et Sanguine Domini*, p. 15.

The following is Bishop Burnet's account of Ratramn: "Ratramnus was commanded by Charles the Bald, then Emperor, to write upon that subject, which he, in the beginning of his book, promises to do, not trusting to his own sense, but following the steps of the holy Fathers. He tells us that there were different opinions about it; some believing that the Body of Christ was there without a figure; others saying that it was there in a figure or mystery; upon which he apprehended that a great schism must follow. His book is very short, and very plain; he asserts our doctrine as expressly as we ourselves can do, he delivers it in the same words, and proves it by many of the same arguments and authorities that we bring."—(Burnet, *Exposition of the Thirty-nine Articles*, Art. xxviii. p. 337.)

<sup>2</sup> Southey, *History of the Church*, chap. xi.; Hume, vol. iii. c. 19.

"The fayth and the determination of holy church touching the blissful sacrament of the auter, is this ; that after the sacramentall wordes ben sayde by a prest in hys masse, the material bred, that was bifore, is turned into Christis verray body ; and the material wyn, that was before, is turned into Chrystes verry blode, and so ther leweth in the auter no material brede, no material wyn, the wych wer ther before the seying of the sacramental wordes ; howe lyve ye this article?"<sup>1</sup>

To which Oldcastle answered, "in sacramento altaris est verum corpus et verus panis, viz., quem videmus, et corpus Christi *sub eodem velatum* quod non videmus." He was burnt for not believing in transubstantiation.

The first of the Six Articles, framed by Henry VIII. when he went back to Transubstantiation, is in these words:—"That in the Eucharist is really present the *natural* Body of Christ *under the forms* and *without the substance* of bread and wine ;" which seems to show clearly that the phrase "under the forms of bread and wine" does not *per se* express the doctrine of Transubstantiation.

Ridley would certainly have adopted the language of Ratramn, and have induced Cranmer to do so. Cranmer, moreover, approved of the Augsburg Confession, in which the Article is as follows:—

#### " VII. De Eucharistia.

"De Eucharistia constanter credimus et docemus, quod in sacramento corporis et sanguinis Domini, vere, substantialiter, et realiter adsint corpus et sanguis Christi *sub speciebus panis et vini*. Et quod sub eisdem speciebus vere et realiter exhibentur et distribuuntur illis qui sacramentum accipiunt, *sive bonis sive malis*."<sup>2</sup>

I may observe in passing, that when the Jerusalem Bishopric Act was passed, the instructions from Lambeth and London to the English bishop were to ordain Prussian subjects who had subscribed the Confession of Augsburg as well as the Thirty-nine Articles of the English Church. The directions were as follows:—

"Congregations consisting of Protestants of the German tongue, residing within the limits of the Bishop's jurisdiction, and willing to submit to it, will be under the care of German clergymen ordained by him for that purpose, who will officiate in the German language according to the forms of their national

<sup>1</sup> *Wilkins' Concilia Mag. Brit.*, vol. iii. pp. 355, 6 ; Collier, *Eccl. Hist.*, vol. iii. p. 294.

<sup>2</sup> *Hardwick on the Articles*, p. 255.



liturgy compiled from the ancient liturgies, agreeing in all points of doctrine with the Liturgy of the English Church, and sanctioned by the Bishop with consent of the Metropolitan for the special use of those congregations; such liturgy to be used in the German language only. Germans intended for the charge of such congregations are to be ordained according to the ritual of the English Church, and to sign the Articles of that Church; and, in order that they may not be disqualified by the laws of Germany from officiating to German congregations, they are, before ordination, to exhibit to the Bishop a certificate of their having subscribed, before some competent authority, the Confession of Augsburg.”<sup>1</sup>

By the joint operation of 3 & 4 Vict. c. 33, and 5 Vict. c. 6, § 4, persons so ordained may officiate with the consent of the Ordinary in England.

It may be well to compare this doctrine, that the Body and Blood of Christ are spiritually present under the form of Bread and Wine, with the doctrine of transubstantiation as laid down by the Council of Trent. The difference between the two doctrines is at once apparent:—

#### “C. IV. De transubstantiatione.

“Quoniam autem Christus redemptor noster corpus suum id, quod sub specie panis offerebat, vere esse dixit, ideo persuasum semper in ecclesia Dei fuit, idque nunc denuo sancta hæc synodus declarat, per consecrationem panis et vini conversionem fieri totius substantiæ panis in substantiam corporis Christi Domini nostri, et totius substantiæ vini in substantiam sanguinis ejus. Quæ conversio convenienter et proprie a sancta catholica ecclesia *transubstantiatio* est appellata.

“Can. II. Si quis dixerit, in sacrosancto eucharistiæ sacramento *remanere substantiam* panis et vini una cum corpore et sanguine Domini nostri Jesu Christi, negaveritque mirabilem illam et *singularem conversionem totius substantiæ panis* in corpus, et *totius substantiæ vini* in sanguinem, *manentibus dumtaxat speciebus* panis et vini, quam quidem conversionem catholica ecclesia aptissime transubstantiationem appellat, anathema sit.”<sup>2</sup>

Nicholson, Bishop of Gloucester, one of the committee selected by the Convocation in 1661 to undertake, in compliance with the King’s order, the revision of the Prayer-Book, speaking of the Holy Eucharist, says, “Christ is there under the

<sup>1</sup> From a Statement of Proceedings relating to the Establishment of a Bishopric of the United Church of England and Ireland in Jerusalem. Published by Authority. Pamphlet: London, December 9, 1841.

<sup>2</sup> *Canones, etc., Concilii Tridentini*, p. 60.

forms of Bread and Wine; not changed in substance but in use;"<sup>1</sup> and in that well-known book of devotion, Sherlock's *Practical Christian*, we read,—

"Grant, Holy Jesus, that as I have now received in faith Thy precious Body and Blood, *veiled under the species of Bread and Wine*, I may hereafter behold Thy Blessed Face reveiled in Heaven."<sup>2</sup>

"He discerns not this Body of our Lord who sees not with the eye of faith Christ really present *under the species of Bread and Wine*, though he conceive not the manner thereof . . . not curiously questioning, much less pragmatically defining, the way and manner of His Presence, as being deeply mysterious and inconceivable. These old verses, expressing the faith of the wisest of our first Reformers, may satisfy every modest, humble, sober-minded, good Christian, in this great mystery of Godliness :—

‘ It was the Lord that spake it,  
He took the bread and brake it,  
And what His word did make it,  
So I believe and take it.’

"And he that receives Christ's Holy Body and Blood into his soul, not first emptied of all his sins by holy faith, and all the sacred offices of true repentance, doth with Judas betray his master into the hands of his enemies, even those very enemies which crucified him; for those were our sins. And therefore it is said of such unworthy receivers that they are guilty of the Body and Blood of Christ."<sup>3</sup>

"Consider," says Sutton, "the divine wisdom of the Son of God, who, respecting our weakness, hath conveyed unto us His Body and Blood after a divine and spiritual manner, *under the form of Bread and Wine*."<sup>4</sup>

*Real Presence.—Effect of the 29th Article on this doctrine.*

An argument was addressed to me founded on the 29th Article of Religion, which I must notice. The 29th Article is as follows :—

"XXIX. *Of the wicked which eat not the body of Christ in the use of the Lord's Supper.*

"The wicked, and such as be void of a lively faith, although

<sup>1</sup> *Exposition of Catechism*, p. 178, cited in Keble on Euch. Adoration, p. 142.

<sup>2</sup> *Sherlock's Practical Christian*, part ii. chap. x., p. 252. Ed. 1841.

<sup>3</sup> *Ibid.* part ii. chap. i.

<sup>4</sup> *Godly Meditations on the most Holy Sacrament of the Lord's Supper*, p. 26.

they do carnally and visibly press with their teeth, as St. Augustine saith, the Sacrament of the Body and Blood of Christ, yet in no wise are they partakers of Christ, but rather to their condemnation do eat and drink the sign or Sacrament of so great a thing."

It was not and could not be contended that Mr. Bennett had directly contravened this Article, because the charge against him, founded upon it, had been struck out by the Court; but it was argued quite fairly, that this 29th Article furnished a reason why the objective presence could not be the doctrine of the Church of England, otherwise it was said the wicked would be partakers of Christ in the Eucharist, which this Article declares they are not.

It seems to me, however, that it can be reasonably and fairly argued that the object of the Article, which must be construed as a whole, and not, as has been strangely supposed, by the title alone, was to assert that the wicked who received the Holy Elements received them to their condemnation; that is, that they did not become *spiritually* partakers of Christ, though they *sacramentally* received his Body and Blood. And the phrase, "eat Christ's Body," I may observe, in the title, is a phrase of theology capable of various interpretations. It is taken from the sixth chapter of St. John, and may be, as it has been, by high authority,<sup>1</sup> interpreted to mean so to eat the Body of Christ as to dwell in Christ, or, in other words, to be "partakers of Christ;" they do not eat Christ's Body to any purpose or effect for which it was offered to them; they eat it to their damnation; they eat a judgment to themselves, but still in one sense they eat it, or rather, as it is expressed in the old Hymn,—

"Sumunt boni sumunt mali,  
Sorte tamen inæquali,  
Vitæ vel interitus;  
Mors est malis vita bonis;  
Vide, paris sumptionis  
Quam dispar sit exitus!"

Bishop Ridley, in the course of his disputation at Oxford, said:—

"Evil men do eat the very true and natural Body of Christ *sacramentally*, and no further, as S. Augustine saith; but good men do eat the very true Body both *sacramentally* and *spiritually*, by grace."<sup>2</sup>

And again we have this passage:—

WATSON.—"Good Sir, I have determined to have respect to the time, and to abstain from all those things which may

<sup>1</sup> Pusey on the Real Presence, p. 255.

<sup>2</sup> Works, p. 246.

hinder the entrance of our disceptation: and therefore first I ask this question:—When Christ said, in John vi., ‘He that eateth my flesh,’ etc., doth he signify in those words the eating of His true and natural flesh, or else of the bread and symbol?”

RIDLEY.—“I understand that place of the very flesh of Christ to be eaten, but spiritually. And further I say, that the Sacrament also pertaineth unto the spiritual manducation: *for without the spirit, to eat the Sacrament, is to eat it unprofitably; for whoso eateth not spiritually, he eateth his own condemnation.*”<sup>1</sup>

St. Augustine, upon whose authority the Twenty-ninth Article professes to be founded, frequently states that the wicked do, in the sense which I have mentioned, receive the Body of Christ. He says:—

“Sicut enim Judas cum buccellam tradidit Domino non malum accipiendo sed male accipiendo locum in se Diabolo præbuit: Sic indigne quisque sumens Dominicum Sacramentum non efficit, ut quia ipse malus est malum sit, aut quia non ad salutem acceperit nihil acceperit. *Corpus enim Domini et sanguis Domini nihilominus erat illis quibus dicebat Apostolus: Qui manducat indigne judicium, sibi manducat et bibit.*”<sup>2</sup>

“De uno pane et Petrus et Judas accepit; Petrus ad vitam, Judas ad mortem; *cibus bonus bonos vivificat malos mortificat.*”<sup>3</sup>

“Corpus Christi cum signo Diaboli accipere non timent.”<sup>4</sup>

“*Judas Christi corpus accepit.*”<sup>5</sup>

Other instances might be mentioned.

Dr. Jackson, to whom I have already adverted, adds the weight of his great authority to this construction of the Article:—

“The questions then to be discussed are two:—

“First, what it is to eat Christ’s Flesh and drink his Blood?

“Secondly, what it is for Christ to dwell or abide in us, and us to dwell or abide in him?

“All agree that there is a twofold eating of Christ’s Body and a twofold drinking of his Blood; one merely sacramental, and another spiritual; which agreement notwithstanding, there ariseth a third question—viz., what manner of eating Christ’s Flesh and drinking his Blood is in this place either only or principally meant?

“For the resolution of this question, we are briefly to explicate each member of this division—viz. (1), what it is to

<sup>1</sup> *Works*, p. 238.

<sup>2</sup> *De Bapt. c. Don.*, lib. v.

<sup>3</sup> *In Joh.*, Tr. 50.

<sup>4</sup> *Ep. ad Poss.*

<sup>5</sup> *In Joh.*, Tr. 62.

eat Christ's Body and drink his Blood sacramentally only; (2) what it is to eat his Body and drink his Blood spiritually.

"First then, all that are partakers of this Sacrament *eat Christ's Body and drink His blood sacramentally*; that is, they eat that bread which *sacramentally* is his Body, and drink that cup which *sacramentally* is his Blood, whether they eat or drink *faithfully* or *unfaithfully*. For all the Israelites (1 Cor. x.) drank of the same spiritual Rock, which was Christ, sacramentally; all of them were partakers of his presence, when Moses smote the rock; *yet with many of them God was not well pleased*, because they did not faithfully either drink or participate of his presence. And more displeased he is with such as eat Christ's Body and drink his Blood unworthily, though they eat and drink them sacramentally; for eating and drinking so only, that is, without faith or due respect, they eat and drink to their own condemnation, because they do not discern or rightly esteem Christ's Body or Presence in the Holy Sacrament.

"May we say then that Christ is really present in the Sacrament, as well to the unworthy as to the faithful receivers? Yes, this we must grant; yet must we add withal, that He is really present with them in a quite contrary manner; really present He is, because virtually present to both; because the operation or efficacy of His Body and Blood is not metaphorical, but real in both. Thus the bodily Sun, though locally distant for its substance, is really present by its heat and light, as well to sore eyes as to clear sights, but really present to both by a contrary real operation; and by the like contrary operation it is really present to clay and to wax; it really hardeneth the one and really softeneth the other. So doth Christ's Body and Blood by its invisible but real influence mollify the hearts of such as come to the Sacrament with due preparation, but harden such as unworthily receive the consecrated elements. If he that will hear the word must take heed how he hears, much more must he which means to receive the Sacrament of Christ's Body and Blood be careful how he receives. He that will present himself at this great marriage feast of the Lamb without a wedding garment, had better be absent. It was always safer not to approach the presence of God, manifested or exhibited in extraordinary manner (as in His sanctuary or in the Ark), than to make appearance before it in an unhallowed manner, or without due preparation. Now, when we say that Christ is really present in the Sacrament, our meaning is, that as God He is present in an extraordinary manner; after such a manner as He was

present (before His incarnation) in His sanctuary, the ark of his Covenant; and by the power of His Godhead, thus extraordinarily present, He diffuseth the virtue or operation of His human nature either to the vivification or hardening of their hearts who receive the sacramental pledges. So, then, a man *by eating Christ's Body merely sacramentally* may be hardened, may be excluded from His gracious presence. But no man hath *Christ dwelling in him* by this manner of eating His Flesh and drinking His Blood, unless withal he eat the one and drink the other spiritually. *The eating then, of Christ's Body, and drinking His Blood, merely sacramentally, is not the eating and drinking here meant."*<sup>1</sup>

Archbishop Secker expresses himself in pretty much the same sense :—

"It is not," he says, "the gross and literal, but the figurative and spiritual eating and drinking, the partaking by a lively faith of an union with Me, and being inwardly nourished by the fruits of My offering up My Flesh and Blood for you, that alone can be of benefit to the soul.

"And as this is plainly the sense in which he says that '*His Flesh is meat indeed, and His Blood is drink indeed,*' so it is the sense in which the latter part of the third answer of our Catechism is to be understood, that '*The Body and Blood of Christ are verily and indeed taken and received by the faithful in the Lord's Supper;*' words intended to show that our Church as truly believes the strong assurances of Scripture concerning this Sacrament as the Church of Rome doth; only takes more care to understand them in the right meaning, which is, that though in one sense *all communicants equally partake of what Christ calls His Body and Blood*, that is, the outward signs of them, yet, in a much more important sense, *the faithful only*, the pious and virtuous receiver, eats His Flesh and drinks His Blood; shares in the life and strength derived to men from His Incarnation and Death; and through faith in Him becomes, by a vital union, one with him—a member, as St. Paul expresses it, *of His Flesh and His Bones*—certainly not in a literal sense, which yet the Romanists might as well assert, as that we eat His Flesh in a literal sense, but in a figurative and spiritual one. In appearance, the Sacrament of Christ's Death is given to all alike, but *verily and indeed* in its beneficial effects to none but the faithful. *Even to the unworthy communicant He is present, as He is whenever we meet together in His name; but in a better and most gracious sense to the worthy soul, becoming by the inward virtue of His Spirit*

<sup>1</sup> *Jackson's Works*, vol. x. pp. 51-53. (Oxford Edition, 1844.)

*its food and sustenance.* This real Presence of Christ in the Sacrament His Church hath always believed."<sup>1</sup>

South did not scruple to speak of his horror when he considered,—

"The pure and blessed Body of our Saviour passing through the open sepulchre of such throats."—(*i.e.* of the wicked.)<sup>2</sup>

Bishop Cosin says :—

"A while before the writing of this Apology, came forth the *Diallactic* of the famous Dr. Poinet, Bishop of Winchester, concerning the truth, nature, and substance of the Body and Blood of Christ in the blessed Sacrament, writ on purpose to explain and manifest the faith and doctrine of the Church of England in that point."<sup>3</sup>

Bishop Poyntet, who is thus referred to, says :—

"Now as to the denial that the wicked can eat the body of Christ, which would necessarily be the case if virtue and spiritual grace were united with the bread, we must make a distinction. For, if we regard the nature of the Sacrament, Divine virtue cannot be absent from the sign, in so far as it is a Sacrament, and serves for this use; if we look to the morals and mind of the recipient, it is not to him life and grace, both of which it is by its own nature, because the evil of the wicked is not capable of so great goodness, nor suffers it to bear fruit in itself. Nay, rather, it is death and condemnation to them. For, as many kinds of meat are in their own nature wholesome, but if they enter into diseased bodies increase the evil, and often accelerate death, not by their own nature but by the fault of the receiver, so it is with regard to the Sacrament, in which its own virtue is always present, until it discharges its office; although, when taken by the unworthy, he is not capable of receiving such goodness, or of deriving any profit therefrom. Cyprian confirms this: 'Sacraments,' he says, 'cannot exist without their own virtue, nor can the Divine majesty be ever absent from the mysteries.' But although the Sacraments are permitted to be taken or touched by the unworthy, they whose want of faith or unworthiness resists so great holiness cannot be partakers of the Spirit. Therefore to some these gifts are the savour of life unto life, to others the savour of death unto death, because it is altogether just that those who despise the grace should be deprived of so great benefit, and that purity should not make an abode for itself in those who are unworthy of such grace."

<sup>1</sup> Secker, *Lecture xxxvi.* vol. xiv. p. 493, ed. 1792, Edinburgh.

<sup>2</sup> *South's Sermons*, vol. ii. p. 310.

<sup>3</sup> *History of Popish Transubstantiation*, vol. iv. p. 159.

Then this author quotes St. Augustine as maintaining these views. He also says:—

“From these and many places it is evident that the Eucharist, as far as appertains to the nature of the Sacrament, is truly the Body and Blood of Christ, is a truly Divine and holy thing, even when it is taken by the unworthy, while, however, they are not partakers of its grace and holiness, but drink their own death and condemnation. Nor in them does such goodness dwell, nor does it enter in order to dwell, but to condemn; nor does the contact of the Lord's Body more profit them than it did the Jews to have touched that holy Body of His, always endowed with its own grace. Wherefore the Sacraments continue, so long as they are Sacraments, to retain their own virtue, nor can they be separated therefrom. For they always consist of their own parts—an earthly and a heavenly, a visible and an invisible, an inward and an outward, whether the good take them or the bad, whether the worthy or the unworthy. Besides, that commutation of the signs, and the transition of the elements into the inward substance, which everywhere occurs in the ancient writers, cannot exist if we separate the virtue from the sign, and we wish the one to be taken apart from the other. But this is to be understood, so long as the sign serves its use, and is adapted to the end for which it was destined by the word of God. . . . The dignity of the Sacraments, and the honour due to them, is not injured, but remains whole and entire, so long as we confess that the truth of the Body and its nature and substance is received by the faithful, together with the symbols, as the ancient Fathers testify. . .

*“The good and the bad alike eat sacramentally with their mouths the Body of Christ and drink His blood, but the good alone do this spiritually.* Now to eat the Body of Christ sacramentally, and to drink His Blood, is to receive the Sacrament of His Body and Blood; that is, the bread and the Body of Christ, the wine and the Blood of Christ. For in no other way are the bread and the wine Sacraments. And he who thinks it possible that the outward signs can be partaken of apart from those things signified, which are a necessary part of the Sacrament, divideth, or rather dissolveth, the Sacrament. For the outward symbols be only one part of the Sacrament.”<sup>1</sup>

“He who receiveth only the bread receiveth no Sacrament; for either the Sacrament is received whole and perfect or not at all. Augustine—‘Sacraments, however, if they be the same, are everywhere whole and perfect, although their meaning be

<sup>1</sup> *Diallacticon viri boni et literati, de veritate, natura, atque substantia Corporis et Sanguinis Christi in Eucharistia.*



depraved, and the handling of them be various and discordant.' For it is not more contrary to reason that the Flesh of Christ be eaten sacramentally, and His Blood drunken by hypocrites, than that it should have been possible that God should have been touched and kissed by the wicked, whensoever they either kissed or touched Christ, without any profit, to their own damnation.—(Augustine on Baptism, against the Donatists.) *Nor doth it make any difference, when the question is touching the perfectness and holiness of the Sacrament, what be the belief and what the faith of the man who receiveth the Sacrament. It maketh indeed, all the difference in respect of the way of salvation, but in respect of the question, what a Sacrament is, it maketh no difference at all. For it may happen that a man may have the Sacrament in its completeness, and a perverted faith, just as it may happen that a man may have all the words of the Creed, and yet have no right belief.*"<sup>1</sup>

Thorndike says:—

"But if eating and drinking the Body and Blood of Christ in this Sacrament unworthily be the crucifying of Christ again, rendering a man 'guilty' of His Body and Blood, then is not His Flesh and Blood *spiritually* eaten and drunk till living faith make them *spiritually* present to the soul, which the consecration maketh sacramentally present to the body. And it is to be noted that no man can say that this Sacrament *represents* or *tenders* and *exhibits* unto him that receiveth the Body and Blood of Christ (as all must do that abhor the irreverence to so great an ordinance which the opinion that it is but a bare sign of Christ crucified necessarily engendereth), but he must believe this; unless a man will say that that which is not present may be represented, that is to say, tendered and exhibited presently down upon the place. It is not, therefore, that living faith which he that receives the Eucharist, and is present at the consecrating of it, may have and may not have that causeth the Body and Blood of Christ to be *sacramentally present* in the elements of it, but it is the profession of that common Christianity which makes men members of God's Church; in the unity whereof wheresoever this Sacrament is celebrated (without inquiring whether those that are assembled be of the number of those to whom the kingdom of Heaven belongs), *thou hast a legal presumption even towards God that thou receivest the Flesh and Blood of Christ in and with the elements of Bread and Wine, and shalt receive the same spiritually for the food of thy soul, supposing that thou receivest the same with living faith.* For one part of our common Christianity being this, that our Lord

<sup>1</sup> *Diallacticon viri boni et literati, de veritate, natura, atque substantia Corporis et Sanguinis Christi in Eucharistia.*

Christ instituted this Sacrament with a promise to make by His Spirit the elements of Bread and Wine *sacramentally* His Body and Blood, so that His Spirit that made them so (*dwelling in them* as in His natural Body), should feed them with Christ's Body and Blood that receive the Sacrament of them with living faith; this institution being executed, that is, the Eucharist being consecrated according to it, so sure as Christianity is true, so sure the effect follows."<sup>1</sup>

Thorndike is very explicit in distinguishing between the merely *sacramental* reception by the wicked and the *spiritual* reception by the good.

"Here, indeed, it will be requisite to take notice of that which may be objected for an inconvenience that God should grant the operation of His Spirit to make the elements sacramentally the *Body and Blood of Christ* upon the dead faith of them who *receive It* to their condemnation in the Sacrament, and therefore cannot be said to *eat* the Body and Blood of Christ (which is only the act of living faith), without that abatement which the premisses have established, to wit, in the Sacrament. But all this, if the effect of my saying be thoroughly considered, will appear to be no inconvenience. For that the *Body and Blood of Christ* should be *sacramentally* present in and under the elements (to be *spiritually* received of all that meet it with a living faith, to condemn those for crucifying Christ again *that receive It with a dead faith*), can it seem any way inconsequent to the consecration thereof by virtue of the common faith of Christians, professing that which is requisite to make true Christians, whether by a living or a dead faith; rather must we be to seek for a reason why 'he that eateth this bread and drinketh this cup unworthily' should be 'guilty of the Body and Blood of Christ' as 'not discerning It;' unless we suppose The Same sacramentally present by virtue of that true Christianity which the Church professing and celebrating the Sacrament, tendereth It for a spiritual nourishment to a living faith,—for matter of damnation to a dead faith. For if the profession of true Christianity be, as of necessity it must be, matter of condemnation to him that professeth it not truly (that is to say, who professing it doth not perform it), shall not his assisting the celebration and consecration of the Eucharist produce the effect of rendering him condemned by himself (*eating the Body and Blood of Christ* in the Sacrament, out of a profession of Christianity which spiritually he despiseth), for not fulfilling what he professeth; or that living faith which concurrerth to the same as a good Christian should do, be left destitute of that grace which the tender of

<sup>1</sup> *Laws of the Church*, chap. iii. pp. 17, 18.

the Sacrament promiseth, because the faith of those who join in the same action is undiscernible? Certainly if the sacramental Presence of Christ's Body and Blood, tendering the same spiritually, be a blessing or a curse, according to the faith which It meets with; it can by no means seem unreasonable that it should be attributed to that profession of Christianity which makes It respectively a blessing or a curse, according to the faith of them for whom it is intended."<sup>1</sup>

Dr. Hey uses remarkable language as to this 29th Article.

"Our *application*" (he says) "may be confined to *mutual concessions*. And for these I think there is greater room in this Article than in any other. The dispute between the Romanists and the Reformed is merely *verbal*. I mean about the present Article as separated from all others. They say, the bread after consecration is the Body of Christ, even in *substance*; it follows, supposing this true, that *whoever* eats that substance, eats the Body of Christ; that is, it is not *desecrated* by one mouth more than by another. We say, that the bread continues bread after consecration, and therefore that every receiver eats bread; but that he who does what the Scripture requires may be said, in the prophetic, strong, figurative language of Scripture, to *eat the Body* of Christ; as he eats what is appointed to represent that Body, and what the Scripture calls briefly that Body itself. The Romanists, therefore, and we, use a phrase, eating the Body of Christ, in two different senses; and we also use this proposition, '*The wicked eat Christ's Body*,' in two different senses; consequently to dispute about its truth is idle and childish. They too use it as a corollary from a proposition which we think false, though we own the corollary to be rightly deduced. Now it must always be trifling to dispute about such a corollary, as if it were an independent proposition. We both require *preparation* for the Sacrament, indeed Romanists more than we; we both say, that unworthy receivers may draw *punishment* upon themselves; we both quote the passage of *Augustin* which is in our Article. In short, we both mean, that the consecrated bread is not desecrated by the unworthiness of the receiver, and that worthiness is required in order to obtain benefit."<sup>2</sup>

In truth, the construction placed by all these authorities on the 29th Article brings it into harmony with the words of the 25th Article: "And in such only as worthily receive the same they have a wholesome effect or operation: but they that receive them unworthily, purchase to themselves damnation, as St. Paul saith."

<sup>1</sup> *Laws of the Church*, chap. iii. p. 18.

<sup>2</sup> *Hey's Lectures in Divinity*, vol. iv. p. 358.

I must also observe that the words "the faithful" or *fideles* have been often interpreted to mean the baptised members of the visible Church, the parables of the tares and the wheat growing together, the good and the bad fish in the same net, being cited to support this position. Thorndike, in the passage just cited, speaks "of that common profession of Christianity which makes men members of Christ's Church; in the unity whereof wheresoever this Sacrament is celebrated, without inquiring whether those that be assembled be of the number of those to whom the Kingdom of Heaven belongs," etc.

And Barrow, in those great sermons on *The Doctrine of Universal Redemption asserted and Explained*, which have been always received by the Church as the soundest and most eloquent exposition of her doctrine, observes:—

"But our Lord is the Saviour of those persons; and therefore he is the Saviour of all men. The assumption we assayed to show in the last argument; and many express testimonies of Scripture before mentioned establish it; the common style of Scripture doth imply it, when in the Apostolical writings to all the visibly faithful indifferently the relation to Christ as their Saviour is assigned, an interest in all his saving performances is supposed, the titles of *σωζόμενοι* and *σεσωσμένοι* (with others equivalent, of justified, sanctified, regenerated, quickened, etc.), are attributed. And in our text<sup>1</sup> GOD is said to be the Saviour chiefly *τῶν πιστῶν*, of the faithful; which word in its common acceptation denotes all visible members of the Christian communion."<sup>2</sup>

In accordance with this teaching, Bishop Beveridge interprets our 19th Article:—

"Of the Church.

"The visible Church of Christ is a congregation of *faithful* men, in the which the pure word of God is preached," etc.

The Bishop says:—

"Though the Church of Christ be one and the same Church, both in heaven and earth, yet it there differs much from itself as here. There it is triumphant, here militant; here it is militant, not triumphant. There it consisteth of good only and not of bad; here of bad as well as good."<sup>3</sup>

Our Burial service is constructed on the presumption that all who are not unbaptised or excommunicate, or have not laid violent hands upon themselves, are to be considered as belonging to the Church of Christ.

<sup>1</sup> ὅτι ἡλπικαμεν ἐπὶ Θεῷ ζῶντι, ὃς ἐστὶ σωτὴρ πάντων ἀνθρώπων, μάλιστα πιστῶν.—1 Timothy iv. 10.

<sup>2</sup> Barrow's *Works*, vol. iv. pp. 25, 26.

<sup>3</sup> Bishop Beveridge on the Articles.

Before, however, I leave the question as to whether the manducation by the wicked of the elements without eating Christ be or be not an argument for the absence of the presence from the consecrated elements, I must observe that an opinion has been maintained by great divines, such as Cyprian and Bishop Ken, that the Presence is miraculously withdrawn from the elements in cases where the wicked or a beast have devoured them.

These are the lines of Bishop Ken :—

“How Godhead to our human Flesh was join’d,  
Transcends the reach of an angelic mind.  
How God and Man with Bread and Wine unite,  
Is too sublime for bounded human sight ;  
To boundless Godhead both united are,  
God Tabernacles here, and Temples there.  
There undivided God and Man exist,  
The Flesh assumed is ne’er to be dismiss’d ;  
’Tis transient here, and when a Judas eats  
The Sacred Bread, Christ’s Shechinah retreats.  
The day and night each other still expel,  
Pure God in souls impure can never dwell.”<sup>1</sup>

According to this opinion, the Real Presence in the Holy Eucharist may be maintained by those who deny the reception of Christ “in any sense” by the wicked.

I am of opinion that the doctrine of the real spiritual or of the objective real Presence maintained by the defendant is not by necessary implication at variance with this 29th Article of Religion, and, as I have already said, Mr. Bennett is not charged with directly contravening any doctrine respecting the reception of the Eucharist by the wicked.

*Real Presence.—Judgment at Bath, 1856.*

The judgment given at Bath by Archbishop Sumner and his assessors against the Archdeacon of Taunton, in 1856, has been cited as having decided the question of the mode of Presence adversely to the statements of Mr. Bennett. But I decline absolutely to admit that this decision has any legal validity, or is in any way binding upon this Court in this case.

I do so for various reasons ; perhaps one reason is sufficient. That decision was reversed by the Court of Arches and the Privy Council. The decision was appealed from on almost every possible ground of law, civil and ecclesiastical ; that is, the nature of the case being considered upon the merits as well as the law. The appeal was heard in the first instance upon the construction of the statute 3 and 4 Vict. c. 86 ; and this

<sup>1</sup> *On the Eucharist : Poetical Works*, vol. i. pp. 123-128, London, 1721.

appeal was successful in both Courts. And as it decided that the Archbishop had by reason of the lapse of time no jurisdiction to try the case at all, the other questions were not discussed; but, as a reference to the pleadings shows, the decision of the Archbishop was as stoutly contested on the merits, or on the law strictly ecclesiastical, as on the statute law.

The inference, that because the appellant was successful *in limine* upon the first objection which he took, he would not have been successful on his other objections which he had not an opportunity of stating, but on which he confidently relied, would indeed be a novel doctrine of jurisprudence.

It is not necessary that I should dwell further upon the subject, or refer to what has happened since 1856; but I ought to add this observation, which perhaps makes all reference to this case unnecessary—namely, that the proceedings against the Archdeacon of Taunton were grounded on his alleged contravention of the law with respect to the reception of the Holy Eucharist by the wicked; a question which I have not to decide in these proceedings against Mr. Bennett.

*Real Presence.—As to the Receptionist Doctrine.*

There is a doctrine as to the mode of the Presence which has obtained the name of the Receptionist Doctrine. It is thus expressed by Hooker:—"The Real Presence of Christ's most Blessed Body and Blood is not therefore to be sought for in the Sacrament, but in the worthy receiver of the Sacrament." To whatever cause this opinion of Hooker may be due, whether, as has been suggested, to his respect for Calvin or his sympathy with the sufferings of Reformers on the Continent,<sup>1</sup> or to the result of his own convictions on the subject, it was certainly not his intention to maintain that no other mode of the Presence could be lawfully holden by Clerks of our Church. For, with that wisdom which is the fruit both of deep learning and fervent charity, he says:—

"As for His dark and hidden works, they" (that is, "such as love piety") "prefer, as becometh them in such cases, simplicity of faith before that knowledge which curiously sifting what it should act on, and disputing too boldly of that which the wit of man cannot search, chilleth for the most part all warmth of zeal, and bringeth soundness of belief many times into great hazard."

And again:—

"The fruit of the Eucharist is the participation of the Body and Blood of Christ. There is no sentence of Holy Scripture

<sup>1</sup> Hooker, *E. P.*, Preface, vol. i.; *Keble on Eucharistical Adoration*, p. 125.

which saith that we cannot by this Sacrament be made partakers of His Body and Blood, except they be first contained in the Sacrament, or the Sacrament converted into them. 'This is my Body,' and 'This is my Blood,' being words of promise, sith we all agree that by the Sacrament Christ doth really and truly in us perform His promise, why do we vainly trouble ourselves with so fierce contentions, whether by consubstantiation, or else by transubstantiation, the Sacrament itself be first possessed with Christ or no? A thing which no way can either further or hinder us, howsoever it stand, because our participation of Christ in this Sacrament dependeth on the co-operation of His omnipotent power which maketh it His Body and Blood to us, whether with change or without alteration of the element such as they imagine, we need not greatly to care nor inquire."<sup>1</sup>

When Hooker's Puritan adversary observed that in these words he seemed to make light of the doctrine of Transubstantiation, Hooker replied:—

"They (the Romanists) ought not to stand in it as in a matter of faith, nor to make so high accompt of it, inasmuch as the Scripture doth only teach the communion of Christ in the Holy Sacrament, and neither the one nor the other way of preparation thereunto. It sufficed to have believed this, and not by determining the manner how God bringeth it to passe, to have entangled themselves with opinions so strange, so impossible to be proved true. They should have considered in this particular Sacrament that which Bellarmine acknowledgeth of Sacraments in generall. It is a matter of faith to believe that Sacraments are instruments whereby God worketh grace in the souls of men; but the manner how He doth it is not a matter of faith."<sup>2</sup>

I was referred to some portions of a charge prepared by the late Archbishop of Canterbury, but which his much lamented death prevented him, perhaps, from correcting, certainly from finishing and delivering. From them it appeared that he adopted, as many divines have done, the opinion of Hooker.

<sup>1</sup> *E. P.*, vol. ii. p. 6, book v. ch. lxvii. (ed. Keble).

<sup>2</sup> *Ibid.* In the same sense the Bishop of Carlisle says, "I mean that they who object to the dogma of transubstantiation, and who say that the Church of Rome had no right to impose such a dogma, do not by that objection express anything incompatible with the strongest opinions concerning our Lord's spiritual presence. What they do say is, that it is wrong to attempt to define that presence by any human formula. And that, especially with regard to the particular formula in question, experience has shown that it is capable of being interpreted in a most mischievous sense, and that it leads almost necessarily, and has in fact led, to the most terrible superstition."—(*Dean Goodwin's Sermons*, 1869, p. 104.)

For Archbishop Longley I can never cease to feel the highest esteem and the deepest regard. It would be a libel on his memory to suppose that he held this particular mode of the Presence to be the only mode which the Church of England allowed her children to believe. The last time that I saw him in public, in the year 1868, he was presiding over the meeting in the theatre at Oxford, the object of which was to found a College for the maintenance of those Church principles which the late Mr. Keble professed. Mr. Keble's edition of Hooker was published in 1845, and his work on the *Eucharistical Adoration* was published in 1857, in both of which he regretted that upon this point Hooker had suffered himself to be biassed by the opinions of foreign reformers, and expressed the strongest possible opinion in favour of the Objective Real Presence in the Holy Elements.

Having cited all these authorities, I will now recur to the very words of the 28th Article:—

“The Body of Christ is given, taken, and eaten in the supper, only after an heavenly and spiritual manner. And the mean whereby the Body of Christ is received and eaten in the Supper, is Faith.”

I believe that the position of those who agree with the opinions of the defendant would take this form of argument, or something like it: They say—What is given?—The Body of Christ. Who gives it?—Our Lord the Great High Priest in Heaven, by the hands of His priests, ministering, as the 26th Article says, by His “commission and authority” on earth. What is taken?—What has been before given, the Body of Christ. What is eaten?—What has been before *given* and *taken*, the Body of Christ.

The manner indeed of the giving, the taking, and the eating is only heavenly and spiritual, but not the less on that account is something given, taken, and eaten external to and apart from the giver, taker, and eater. The whole manner of the Presence is indeed supernatural, but not the less true; spiritual, but not the less real; heavenly, but not the less actually there to cleanse the body and wash the soul of the communicant. It has happened that among the recent discoveries of ecclesiastical historical records we have a “contemporanea expositio” from the compiler of this Article, which cannot, I think, be gainsaid.

It is a letter entitled—

“Edmund Gheast, Bishop of Rochester, to Cecil.”

“Greeting in ye Lord,” and it goes on as follows:—

“Right Honourable,—I am verye sorye yt you are so sick. God make yow whole, as it is my desyer and prayer. I wold



have seen yow er this, accordinge to my dutye and good will, but when I sent to knowe whether I might see yow, it was often answered yt yow were not to be spoken with.

"I suppose yow have hard how ye Bisshop of Glocestre" (*i.e.* Cheney) "found him selue greeved with ye placynge of this adverb *onely* in this article, The bodye of Christ is gyven, taken, and eaten in ye Supper after an heavenly and spiritual manner *onely*, by cause it did take away ye presence of Christis bodye in ye Sacrament, and prively noted me to take his part therein, and yeasterdaye in myn absence more playnely touched me for the same. Whereas betwene him and me I told him plainely, that this word *onely* in ye aforesaid article did not exclude ye presence of Christis Body fro the Sacrament, but onely ye grossenes and sensiblenes in ye receavinge thereof. Ffor I saied unto him, though he tooke Christis Body in his hand, receaved it with his mouthe, and that corporally, naturally, reallye, substantially, and carnally, as ye doctors doo write, yet did he not, for all that, see it, feale it, smelle it, nor taste it. And therefore I told him I wold speake against him herein, and *ye rather by cause ye article was of myn own pennyng*. And yet I wold not, for all that, denye thereby any thing that I had spoken for the presence. And this was the some of our talke.

"And this that I saied is so true by all sortes of men, that even D. Hardinge writeth the same, as it, appeareth most evidently by his wordes reported in ye Bisshoppe of Salisburie's" (Jewel's) "booke, pagina 228, wich be thees: then we maye saye, yt in the Sacrament his verye body is present, yea, really, is to saye, in deede, substantially, that is, in substance, and that corporally, carnally, and naturally; by which wordes is ment that his verye bodye, his verye flesh, and his very humaine nature, is there, not after corporall, carnall, or natural wise, but invisibly, unspeakably, supernaturally, spiritually, divinely, and by waye unto him only known.

"This I thought good to write to your honour for myn own purgation. The Almightye God in Christ restore yow to your old health, and longe keepe yow in the same, with encrease of vertue and honour.

"Yours whole to his poor powre,

"EDM. ROFFENS."

*Indorsed*.—"22 December 1556, B. of Rochester to myself."

*Superscribed*.—"To the Right Honourable and his singler good freind Sir Willm. Cecill, knight, principal Thresaure to ye Queen's Matie."<sup>1</sup>

<sup>1</sup> Cited in Pusey, *On the Real Presence*, p. 203, also printed separately in a pamphlet.

The Homily "concerning the Sacrament" speaks of faith being "a necessary instrument;" the Article had spoken of it as "a mean." May it not be said to have this signification—a "necessary instrument" or "a mean" of *beneficial* reception, or what the Homily calls "fruition," of "a ghostly *substance*?" Is such a construction at all events wholly inadmissible, and does it subject the holder of the theory to punishment?

The alterations effected in the Holy Communion service after the Second Prayer-Book of Edward VI., both in the reign of Elizabeth and Charles II., were certainly not unfavourable to those who maintained a Real, or, as it is not uncommonly designated, an Objective Presence in the Eucharist. I do not dwell on the marginal rubrics, with respect to manual rites, or the position of the Priest before the table. But I come first to the important addition made to the language which the Priest is directed to use when he delivers the Holy Elements to the communicants. It cannot, I think, be reasonably doubted that the substitution of the words, "Take and eat this in remembrance that Christ died for thee, and feed on Him in thy heart by faith with thanksgiving," for "The body of our Lord Jesus Christ which was given for thee, preserve thy body and soul unto everlasting life," and the substitution of "Drink this in remembrance that Christ's blood was shed for thee, and be thankful," for "The Blood of our Lord Jesus Christ which was shed for thee, preserve thy body and soul unto everlasting life," was intended to give a greater prominence to the commemorative character of the rite, and to avoid as much as possible the recognition of the Presence. Queen Elizabeth insisted on the restoration of the discarded sentences, and ever since the two have been joined together in the service of the Holy Communion. The part of the Catechism introduced in the reign of James I. relative to the Holy Eucharist, according to the plain meaning of the words, favours the doctrine of the real Presence in the Holy Elements.

In the Canons of 1603, it is said (Canon 57) that "the doctrine both of Baptism and the Lord's Supper is so sufficiently set down in the Book of Common Prayer to be used at the administration of the said Sacraments, as nothing can be added unto it that is material and necessary."

The directions for the reverent consumption of the unconsumed elements, and for covering them with a fair linen cloth, seem to indicate increased reverence for this Sacrament. But the next matter of importance is the alteration in what is commonly, but improperly, called the Black Rubric—*i.e.* the declaration on kneeling at the close of the Communion service. This declaration, which contains an apology for the kneeling

posture of the communicants, found its way, under the religious influences which then prevailed, into the Second Prayer-Book of Edward VI. It specified that "no adoration was done or ought to be done either unto the sacramental bread and wine there bodily received, or unto any *real and essential* Presence there being of Christ's natural flesh and blood." Queen Elizabeth omitted this declaration altogether from her Prayer-Book. There can be no doubt that she did so because it was an obstacle to the communion of the Lutherans and Roman Catholics in our Church, as well as because, rightly or wrongly, she interpreted it as adverse to the doctrine of the Presence.

Upon this point we have the consentient voice of two rival historians. Collier says that Queen Elizabeth's council, on her accession, impressed upon her that "To prevent discontent the reformed liturgy ought to be reviewed and made as inoffensive to all parties as may be;" Burnet, that the Queen inclined "to have the manner of Christ's Presence in the Sacrament left in some general words, that those who believed the Corporal Presence might not be driven away from the Church by too nice an explanation of it."<sup>1</sup>

"Corporal" is not equivalent to "real and essential" (as Mr. Keble truly remarks). "It is not only associated with grosser and more carnal ideas, but in its strict philosophical meaning implies also something local, in the sense of filling a certain space, *οἰκεῖον περιγράφην*. The form of His glorious Body, 'real,' 'substantial,' 'essential,' imply nothing of the kind. They express our faith in the miracle, without in the least pretending to indicate the manner of it."<sup>2</sup>

At the Savoy Conference in 1661, the Presbyterians desired the restoration of the declaration, and the Bishops opposed it, but eventually consented to its restoration, with an alteration of the most material character—namely, the substitution of the words "*corporal* Presence of Christ's *natural* flesh and blood," for the words "real and essential Presence there being," etc.

It appears to be that the principle of legal construction applicable to this grave and deliberate alteration is clear—namely, that it was intended to exclude, in conformity with the Articles, that gross mode of Presence which is called Transubstantiation, but to admit the "real and essential Presence," which the Second Prayer-Book of Edward VI. had excluded.

The alterations which a party in the Church, and the Dissenters from without, after the accession of William and

<sup>1</sup> *Eccl. Hist.*, vol. vi. p. 199 (ed. 1840); *Hist. Reformation*, vol. ii. Book 3, p. 753 (ed. Oxford, 1829).

<sup>2</sup> *Keble on Euch. Ador.* p. 137.

Mary, endeavoured in 1689 to effect in the Prayer-Book, point to the same result.

The Catechism appeared to express so strongly, as Bishop Hampden has observed, the Catholic doctrine as to the Sacraments, that those who did not adopt that doctrine were naturally anxious to alter the language of the Catechism. They did not succeed; but the table which follows represents the attempts that they made with respect to the Holy Eucharist.

*Alterations in the Book of Common Prayer in 1689.*

“(452.) The question.] What is the outward part or sign of the Lord’s Supper?”	“Altered.] What are ye outward and visible signs in the Lord’s Supper?”
“(453.) The question.] What is the inward part or thing signified?”	“Altered.] What are the things signified by ye Bread and Wine?”
“(454.) In the answer, ‘The Body and Blood of Christ,’ etc.] are verily and indeed taken and received by the faithful in the Lord’s Supper.”	“Struck out and altered thus.] Were offered for us upon ye Cross once for all.”
“(455.) The following question.] What are the benefits whereof we are partakers thereby?”	“Struck out, and the following additions substituted, which are so constructed as to join on with the answer to that question.] “Question.] What is ye inward and spiritual grace?” “Answer.] The benefits of ye Sacrifice of Christ’s Body and Blood, which are verily and indeed taken and received by ye faithful in ye Lord’s Supper.” <sup>1</sup>

With respect, therefore, to the charges in the criminal articles against Mr. Bennett for describing the Presence in the Holy Eucharist as “actual” and “objective,” I must hold that by the use of these expressions he has not contravened the formularies of our Church, or committed any ecclesiastical offence.

*Doctrine of the Sacrifice.*

Under the second category of the alleged offences of the defendant, I find the following charges:—

(1.) “That the Holy Communion Table is an altar of sacrifice, at which the ministering priests of the Church appear in a *sacerdotal position* at the celebration of the Holy Communion, and that at such celebration there is a great sacrifice or offering

<sup>1</sup> *House of Commons Return*, 1854.

of Jesus Christ by the ministering priest, and that in such sacrifice or offering the Mediation of Jesus ascends from such altar to plead for the sins of men.

(2.) "That the Holy Communion Table is an altar of a sacrificial character, at which the ministering priests of the Church discharge a *sacerdotal office* at the celebration of the Holy Communion, and that at such celebration there is a living, real, and spiritual offering of Christ by the ministering priest."

In the extract from Mr. Bennett, contained in Article 5, lettered A, he speaks of "sacerdotal representation at her altars;" he has before spoken of the "episcopal representation of the Church in the House of Lords." By the term "sacerdotal representation" is meant, I suppose, the officiating of the priest at the Holy Table; the Latin word has been used instead of the Saxon, and the language is vague, but I find nothing necessarily at variance with the doctrine of the Church of England in the use of the expression.

In passage B the defendant speaks of "the doctrine of sacrifice," and of "the idea of a sacrifice in the Blessed Eucharist." In various passages he speaks of "the Eucharistic Sacrifice;" in passage E of "the sacrificial character of the Altar;" in passage G of a "living real spiritual offering of Christ upon the Altar;" and in passage L of "the sacrifice offered by the Priest in the Holy Eucharist."

Passage D is as follows :—

(*Some Results, etc.*)

At pages 12 and 13—

(D) "The Priest or Priest and Deacon formerly standing with faces opposite each other, and leaning over the Altar in apparently amicable conference, now appear in their Sacerdotal position, as though they were in reality occupied in the great Sacrifice which it is their office to offer. Formerly, an ordinary Surplice, and frequently not over clean or seemly, covered the person of the ministering Priest, no difference being manifested between that and all other offering of Prayer: now the ancient vestments present to crowds of worshippers the fact, that here before God's Altar is something far higher, far more awful, more mysterious, than aught that man can speak of, namely, the Presence of the Son of God in human Flesh subsisting. And towards this are tending all the ancient rites of the Church which are now in course of restoration. The solemn music and the smoke of the incense go up before God, assuring the World that here is no appearance only of love, but a reality and a depth which human hearts cannot fathom, nor even the Angels themselves. The incense is the Media-

tion of Jesus ascending from the Altar to plead for the sins of man."

As this extract appears to me to be the most explicit, if such a word be applicable to any of Mr. Bennett's statements with respect to the offence charged, I have cited it *in extenso*. It contains, I think, these propositions; that there is a "Great Sacrifice," which it is the office of the priest to offer, to which his position at the altar has reference; that the dresses of the priests are calculated to apprise the worshippers of "the Presence of the Son of God in human flesh subsisting," as to the use of which words I have already expressed my opinion; that the rites of music and incense tend to symbolise this Presence, and to represent the reality and depth of God's love; and that the incense further or especially represents the Mediation of our Lord ascending from the Altar. With respect to the propositions relating to the symbolical character of vestments and rites, no specific charge is made; and with respect to the use of incense at the time of the Holy Communion, a judgment prohibitory of it has been delivered by me since these passages were written. But I must observe here that the sentence, "The incense is the Mediation of Jesus ascending from the Altar to plead for the sins of man," is a statement as to the symbolical use of incense, and *per se* does not contravene the doctrine of the Church. What is here predicated of incense is not necessarily connected with the doctrine of a Sacrifice, but rather, as it would seem to me, with the doctrine of the Presence; and therefore that part of the charging article, which, omitting all mention of incense, applies the words as to the Mediation of Jesus ascending from the Altar to the doctrine of a Sacrifice, is founded on a construction of the words of the defendant which they do not necessarily bear. This part of the charge, therefore, is, I think, not well laid; but if it were, it would be only an aggravation of the charge with respect to the doctrine of a Sacrifice.

It appears to me that the articles of charge are in other respects well founded.

The law on this subject is mainly contained in the 31st Article of Religion:—

"The offering of Christ once made is that perfect redemption, propitiation, and satisfaction for all the sins of the whole world, both original and actual; and there is none other satisfaction for sin but that alone. Wherefore, the sacrifices of masses, in the which it was commonly said that the priest did offer Christ for the quick and the dead, to have remission of pain or guilt, were blasphemous fables and dangerous deceits."

With this should be contrasted the Canons of the Council of Trent:—

Can. I. "Si quis dixerit, in missa non offerri Deo verum et proprium sacrificium, aut quod offerri non sit aliud quam nobis Christum ad manducandum dari: anathema sit.

Can. III. "Si quis dixerit missæ sacrificium tantum esse laudis et gratiarum actionis, aut nudam commemorationem sacrificii in cruce peracti, non autem propitiatorium; vel soli prodesse sumenti; neque pro vivis et defunctis pro peccatis, pœnis, satisfactionibus et aliis necessitatibus offerri debere: anathema sit."<sup>1</sup>

I have, therefore, to consider, *first*, Whether the doctrine of a Sacrifice, as connected with the Eucharist, be in every sense forbidden by the law of the Church; *secondly*, Whether, if the Church admit in any sense the doctrine of a Sacrifice, the passages extracted contain such a sense of that doctrine as it does not admit.

To deal with the first point first:—

I have been referred to the case of *Westerton v. Liddell*,<sup>2</sup> as a judgment of the Privy Council upon this point. It is said that this decision established that the use of the term "Sacrifice," as applied in any way to the Eucharist, was unlawful. I am unable to take that view of the judgment for various reasons:

*First*, The question as to the lawfulness of the term had never been raised in the argument, and a decision upon it was not necessary for the issue in the cause. If this point had been argued, it would have been shown, no doubt, that the authority of Cudworth, principally in the absence of argument, relied upon by the Court, was opposed, not only to the great learning and authority of Mede, of Grabe, of Andrewes, of Laud, of Jackson, and the yet greater authority of one whom Waterland himself called—while dissenting from his opinion—"the incomparably learned and judicious" Bishop Bull.<sup>3</sup>

*Secondly*, Since the observations on this point in *Liddell v. Westerton*, a flood of learning has been poured out upon the subject by the very learned treatises of Dr. Pusey, Mr. Keble, the Bampton Lectures of Bishop Moberly, the Essay of Archdeacon Churton, and other works; and when I remember how much effect was ascribed by the Privy Council to a treatise of Dr. Story, which examined with great learning the law as to bills of exchange, and disapproved of former decisions of the Court of Queen's Bench on this subject,<sup>4</sup> I am sure not less effect would be ascribed by that tribunal to the treatises which

<sup>1</sup> *Canones, etc., Concilii Tridentini*, Sess. xxii.

<sup>2</sup> *Moore's Special Report*.

<sup>3</sup> *Waterland's Works*, vol. vii. p. 343, ed. 1823.

<sup>4</sup> *Allen v. Kemble*, 6 Moore, P.C. 323.

have since examined with at least equal learning this difficult subject, then, perhaps, as in the case of the Bills of Exchange, by comparison, but superficially considered.

*Thirdly*, The judgment of the Privy Council did not in fact pronounce even any *obiter dictum* as to the lawfulness of the use of this term in a particular or metaphorical sense. Even Waterland, whom Archdeacon Churton describes as not impressed with the "higher and deeper sacramental truths," observes:—

"Nevertheless, the Sacrament of the Eucharist has more particularly obtained the name of *Sacrifice*, partly on account of the *offerings* to church and poor in the *ante-oblation*, which are *peculiar* to that Sacrament, and partly on account of the commemorated *Sacrifice* in the *post-oblation*. For though baptism commemorates the *death* and *burial*, and indirectly the *grand sacrifice*, yet it does not so precisely, formally, and directly represent or commemorate the *Sacrifice of the Cross* as the Eucharist does."<sup>1</sup>

There are several other passages, both in his work "A Review of the Doctrine of the Eucharist as laid down in Scripture and Antiquity," and in his charge to the Middlesex clergy, entitled "The Christian Sacrifice Explained, with an Appendix," where he maintains a similar doctrine. Indeed, upon this point—namely, the existence of a sacrifice in some sense, as connected with the Eucharist,—it would be easy to accumulate authorities from the divines of our Church. But as Waterland may be considered as the most prominent master of this school, I content myself with his authority.

I am led therefore to the certain conclusion that it is lawful for a clergyman to speak in some sense of the Eucharistic

<sup>1</sup> *Waterland's Works*, vol. viii. p. 223, ed. 1823.

"The value of this treatise of Waterland's will be found to consist in the clear refutation it supplies to the leading Socinian glosses on the doctrine of the Eucharist, reducing it, as it speaks, to a bare memorial of an absent friend. When he comes to deal with higher and deeper sacramental truths, he is no longer persuasive, often no longer trustworthy. He could vindicate the testimony of Holy Scripture concerning the Divine Persons, but seems to have seen nothing mysterious in that solemn rite which was given to make men partakers of the Divine nature. It was the tendency of the cold age in which he lived, when even persons of well-regulated lives, and not altogether destitute of piety, could approve of the poor sophism of 'modest Foster,' or one of his admirers. Where mystery begins religion ends. It was Waterland's great misfortune, in other respects, as well as in writing on this great subject, that he was altogether unacquainted with the writings of one who is perhaps the very first of English divines, the most profound and copious reasoner in divine things, the devout and learned Dr. Thomas Jackson."—*Supplement to Waterland's Works. Fourteen Letters from Daniel Waterland to Zachary Pearce, etc., by Edward Churton, M.A., Archdeacon of Cleveland* (1868), p. xxxiii. (Preface.)



sacrifice, and therefore, in some sense, also of the "sacrifice offered by the priest," and "the sacrificial character" of the Holy Table. Much of Mr. Bennett's language would fall under these categories, upon the ordinary principles of construction, by which alone in this criminal suit I must be guided. With respect to any language which may be considered to go beyond this limit, I must see whether it exceeds the liberty which, according to the judgments of the Privy Council, I must hold to be accorded to all clergymen in cases where the formularies are not express, imperative, and susceptible of but one interpretation.

*Authorities on the use of the term "Sacrifice."*

In Dr. Smith's *Dictionary of the Bible* will be found a learned article on "Sacrifice;" it ends with these words:—

"Such is a brief sketch of the doctrine of Sacrifice. It is seen to have been deeply rooted in men's hearts, and to have been, from the beginning, accepted and sanctioned by God, and made by Him one channel of His Revelation. In virtue of that sanction it had a value, partly symbolical, partly actual, but in all respects derived from the one True Sacrifice, of which it was the type. It involved the expiatory, the self-dedictory, and the *Eucharistic* ideas, each gradually developed and explained, but all capable of full explanation only by the light reflected back from the Antitype." [Signed "A. B." (Alfred Barry, M.A., Head Master of the Grammar School, Leeds; late Fellow of Trinity College, Cambridge).]<sup>1</sup>

The first authority to which I refer is that of Ratramn, quoting St. Augustine:—

"Nonne semel *immolatus* est Christus in seipso; et tamen in sacramento non solum per omnes Paschæ solennitates; sed omni die populis *immolatur*? Nec utique mentitur qui interrogatus, eum responderit *immolari*. Si enim sacramenta quandam similitudinem rerum earum, quarum sacramenta sunt, non haberunt, omnino sacramenta non essent."<sup>2</sup>

Again:—

"Quod semel fecit nunc quotidie frequentat. Semel enim pro peccatis populi se obtulit: celebratur tamen hæc eadem oblatio singulis, per fideles, diebus, sed in mysterio: ut quod Dominus Jesus Christus, semel se offerens, adimplevit, hoc, in eius passionis memoriam, quotidie geratur per mysteriorum celebrationem. Nec tamen falso dicitur quod in mysteriis illis, Dominus vel imoletur vel patiatur: quoniam illius mortis atque passionis habent similitudinem, quarum existunt

<sup>1</sup> Vol. iii. p. 1083.

<sup>2</sup> P. 27.

representationes. Unde Dominicum corpus et sanguis Dominicus appellantur : quoniam eius sumunt appellationem, cujus existunt sacramentum.”<sup>1</sup>

The next authority is Bishop Ridley, who says :—

“For as St. Augustine saith, in his 20th book, ‘Christ’s Flesh and Blood was in the Old Testament promised by similitudes and signs of their *sacrifices*, and was exhibited in deed and in truth upon the cross, but the same is celebrated by a sacrament of remembrance upon the altar.”<sup>2</sup>

Again :—

“And in his book, *De Fide ad Petrum*, cap. 19, he saith, that ‘in these sacrifices (meaning of the old law) it is figuratively signified what was then to be given ; but in this sacrifice it is evidently signified, what is already given (understanding *in the sacrifice upon the altar*) the remembrance and thanksgiving for the flesh which he offered for us upon the cross,’ as in the same place evidently there it may appear.”<sup>3</sup>

Again :—

“Was Christ (saith St. Augustine) offered any more but once ? And he offered himself. And yet in a Sacrament or representation, not only every solemn feast of Easter, but also every day to the people he is offered. So that he doth not lie that saith, ‘He is every day offered.’ For if Sacraments had not some similitude or likeness of those things whereof they be sacraments, they could in no wise be Sacraments, and for their similitudes and likeness commonly they have the names of the things whereof they be Sacraments. Therefore, as after a certain manner of speech the Sacrament of Christ’s Body *is* Christ’s Body, the Sacrament of Christ’s Blood *is* Christ’s Blood, so likewise the Sacrament of Faith *is* Faith.”<sup>4</sup>

<sup>1</sup> P. 31.

<sup>2</sup> *Works*, p. 39. Hujus sacrificii caro et sanguis ante adventum Christi per victimarum similitudinem promittebatur, in passione Christi per ipsam veritatem reddebatur, post adscensum Christi per sacramentum memoriæ celebratur.—S. Aug. cent. Faust. lib. xx. c. 98, Op. Ed. Ben. Par. tom. viii. col. 348.

<sup>3</sup> *Ibid.* p. 40. In illis enim carnalibus victimis figuratio fuit carnis Christi, quam pro peccatis nostris ipse sine peccato fuerat oblaturus, et sanguinis quem erat effusus in remissionem peccatorum nostrorum ; in isto autem sacrificio gratiarum actio atque commemoratio est carnis Christi quam pro nobis obtulit et sanguinis quem pro nobis idem deus effudit.—Fulgentius, Edit. Lug. 1633.

<sup>4</sup> *Ibid.* pp. 40, 41. “Nonne semel immolatus est Christus in seipso ? et tamen in sacramento non solum per omnes Paschæ solemnitates, sed omni die populis immolatur, nec utique mentitur qui interrogatus eum responderit immolari. Si enim sacramenta quandam similitudinem earum rerum quarum sacramenta sunt, non haberent, omnino sacramenta non essent ; ex hac autem similitudine plerumque etiam ipsarum rerum nomina accipiunt. Sicut ergo, secundum quemdam modum, sacramentum corporis Christi

Again:—

“These Scriptures do persuade me to believe that there is no other oblation of Christ (albeit I am not ignorant there are many sacrifices) but that which was once made upon the Cross.

“The testimonies of the antient fathers which confirm the same are out of Augustine ad Bonifac., Epist. 23. Again, in his *Book of Questions*, in the 61st Question. Also in his book against Faustus the Manichee, Book xx. chap. 21. And in the same book against the said Faustus, chap. 18, thus he writeth,—‘Now the Christians keep a memorial of the sacrifice past with a holy oblation and participation of the Body and Blood of Christ.’ Fulgentius in his book *De Fide* calleth the same oblation a commemoration.”<sup>1</sup>

Thorndike says:—

“But if it be manifest that by the Sacrament of the Eucharist God pretends to tender us the communion of the Sacrifice of Christ upon the Cross, then there is *another* presence of the Body and Blood of our Lord in the Sacrament, *beside* that spiritual presence in the soul which that living faith effecteth without the Sacrament as well as in the receiving of it.

“Which kind of presence, you may, if you please, call the *representation* of the Sacrifice of Christ; so as you understand the word ‘representation’ to signify not the figuring or resembling of that which is only signified, but as it signifies in the Roman laws, when a man is said ‘*representare pecuniam*,’ who pays ready money; deriving the signification of it *a re presenti*, not from the preposition *re*; which will import not the presenting of that again to a man’s senses which is once past, but the tendering of that to a man’s possession which is tendered him on the place.”<sup>2</sup>

Bishop Brevint, on the question of the Sacrament being a Commemorative Sacrifice, says:—

“There never was on earth a true religion without some kind of sacrifices. . . . Nevertheless this Sacrifice, which by a real oblation was not to be offered more than once, is by an Eucharistical and devout commemoration to be offered up every day. That is what the Apostle calls ‘to set forth the

corpus Christi est, sacramentum sanguinis Christi sanguis Christi est; ita sacramentum fidei fides est.”—S. Aug. Epist. xxiii., Op. Ed. Ben. Par. vol. ii. col. 267, F.

<sup>1</sup> *Ridley’s Works*, p. 178. Unde jam Christiani peracti ejusdem sacrificii memoriam celebrant sacrosancta oblatione et participatione corporis et sanguinis Christi.—S. Aug. *ibid.* c. 18.

<sup>2</sup> *Laws of the Church*, Book iii. chap. ii. p. 10.

death of the Lord ;' to set it forth, I say, as well before the eyes of GOD His Father, as before the eyes of all men ; and what St. Austin did explain when he said that the holy flesh of Jesus Christ was offered up in three manners, by prefiguring sacrifices under the law before His coming into the world ; in real deed upon the cross ; and by a Commemorative Sacrament after He is ascended into Heaven. All comes to this ; first, that the Sacrifice, as it is itself and in itself, can never be reiterated ; yet by way of devout celebration and remembrance, it may nevertheless be reiterated every day. Secondly, that whereas the Holy Eucharist is by itself a Sacrament, wherein GOD offers unto all men the blessings merited by the oblation of his Son, it likewise becomes by our remembrance a kind of Sacrifice also ; whereby, to obtain at His hands the same blessings, we present and expose before His eyes that same holy and precious oblation once offered."<sup>1</sup> . . .

Bishop Beveridge says :—

"But now, under the Gospel, other kinds of sacrifices are required. We are now commanded to 'present our bodies a living sacrifice;' not to kill them, but to offer them up alive as a living sacrifice, dedicating ourselves wholly to the service of GOD. Hence all manner of good, pious, and charitable works that are done in obedience to GOD, and for his service and honour, are now called 'sacrifices,' . . . particularly our open or public praying to him, and to him alone, for all the good things that we want. For hereby we plainly discover that we believe him to be the author and giver of 'every good and perfect gift.' . . . And therefore under the law itself their public prayers always went along with their daily sacrifices, both morning and evening. 'Let my prayer,' saith David, 'be set before Thee as incense, and the lifting up of my hands as an evening sacrifice.' Especially considering that prayer always was and ought to be accompanied with praise and thanksgiving to GOD, which is so properly a sacrifice that is often called by that name. 'I will offer,' saith David, 'to Thee the sacrifice of thanksgiving' (Ps. cxvi. 17) ; 'And let them sacrifice the sacrifices of thanksgiving, and declare his works with rejoicing or singing' (Ps. cvii. 22). But the Sacrifice that is most proper and peculiar to the Gospel is the Sacrament of the Lord's Supper, instituted by our Lord Himself, to succeed all the bloody sacrifices in the Mosaic Law. For though we cannot say, as some do, that this is such a Sacrifice whereby Christ is again offered up to GOD both for the living and the dead,"

<sup>1</sup> *Brevint, Christian Sacrament and Sacrifice.* Cited in the *Eucharistica* published by the Bishop of Oxford, 1861, p. 179.

The words which follow are important,  
*"yet it may as properly be called a Sacrifice as any that was ever offered,* except that which was offered by Christ Himself ; for His, indeed, was the only true expiatory Sacrifice that was ever offered. Those under the law were only types of His and were called sacrifices simply upon that account, because they typified and represented that which he was to offer for the sins of the world ; and therefore the Sacrament of Christ's Body and Blood may as well be called by that name as they were. They were typical, and this is a commemorative sacrifice."<sup>1</sup>

Field, Dean of Gloucester in 1609, says, in his *History of the Church*, as follows :--

"We must observe that by the name of Sacrifice, gift, or present, first the oblation of the people is meant, that consisteth in bread and wine, brought and set upon the Lord's table. In which again two things are to be considered, the outward action, and that which is signified thereby ; to wit, the people's dedicating themselves and all that they have to God by faith and devotion, and offering to him the sacrifice of praise. In this sense is the word Sacrifice used in the former part of the canon, as I have already showed. In respect of this is that prayer poured out to God, that he will be mindful of his servants that do offer unto him this sacrifice of praise, that is, these outward things in acknowledgment that all is of him, that they had perished if he had not sent his Son to redeem them, that unless they eat the Flesh, and drink the Blood of Christ, they have no life ; that he hath instituted Holy Sacraments of his Body and Blood, *under the forms of bread and wine*, in which he will not only represent, but exhibit the same unto all such as hunger and thirst after righteousness ; and therefore they desire him so to accept and sanctify these their oblations of bread and wine, which in this sort they offer unto him, that they may become unto them the Body and Blood of Christ, that so partaking in them they may be made partakers of Christ, and all the benefits of redemption and salvation that he hath wrought. Secondly, by the name of Sacrifice is understood the Sacrifice of Christ's Body ; wherein we must first consider the thing offered, and secondly, the manner of offering. The thing that is offered is the Body of Christ, which is an eternal and perpetual propitiatory Sacrifice, in that it was once offered by death upon the Cross, and hath an everlasting and never-failing force and efficacy. Touching the manner of offering Christ's Body and Blood, we must consider that there is a

<sup>1</sup> Bishop Beveridge, cited in the *Eucharistica*, p. 202.

double offering of a thing to God. First, so as men are wont to do that give something to God out of that they possess, professing that they will no longer be owners of it, but that it shall be his, and serve for such uses and employments as he shall convert it to. Secondly, a man may be said to offer a thing unto God, in that he bringeth it to his presence, setteth it before his eyes, and offereth it to his view, to incline him to do something by the sight of it and respect had to it. In this sort Christ offereth himself and his Body once, crucified daily in Heaven, and so intercedeth for us; not as giving it in the nature of a gift or present, for he gave himself to God once, to be holy unto him for ever; nor in the nature of a Sacrifice; for he died once for sin, and rose again never to die any more; but in that he setteth it before the eyes of God his Father, representing it unto him, and so offering it to his view to obtain grace and mercy for us. And in this sort we also offer him daily on the altar, in that commemorating his death, and lively representing his bitter passions endured in his body upon the Cross, we offer him that was once crucified and sacrificed for us on the Cross, and all his sufferings, to the view and gracious consideration of the Almighty, earnestly desiring, and assuredly hoping, that he will incline to pity us, and show mercy unto us, for this his dearest Son's sake, who in our nature for us, to satisfy his displeasure and to procure us acceptance, endured such and so grievous things. This kind of offering or sacrificing Christ, commemoratively, is twofold, inward and outward; outward as the taking, breaking, and distributing the mystical bread, and pouring out the cup of blessing, which is the Communion of the Blood of Christ; the inward consisteth in the faith and devotion of the Church and people of God, so commemorating the death and passion of Christ their crucified Saviour, and representing and setting it before the eyes of the Almighty, that they fly unto it as their only stay and refuge, and beseech him to be merciful unto them for his sake that endured all these things, to satisfy his wrath, and work their peace and good.”<sup>1</sup>

Again, in chap. xix. :—

*“Of the Real Sacrifice of Christ's Body on the Altar, as a propitiatory Sacrifice for the quick and the dead.*

“Touching the real sacrificing of Christ's Body on the Altar, the Church never taught any such thing as the Romanists now teach, as appeareth by these testimonies following :—

<sup>1</sup> *Field, Of the Church*, vol. ii. pp. 60-62.

“ ‘Although,’ saith Biel,<sup>1</sup> ‘Christ was once offered when He appeared in our Flesh, He is offered, notwithstanding, daily, hidden *under the veils of bread and wine*, not touching any of those things which import punishment or suffering (for Christ is not daily wounded; He suffereth not; He dieth not); but for two other causes the consecration and receiving of the Holy Eucharist may be named a Sacrifice and oblation; first, because it is a representation and memorial of the true Sacrifice and holy oblation made on the Altar of the Cross; secondly, because it maketh us partakers of the effects of the same. Now, the resemblances of things, as Augustine noteth, writing to Simplicianus, are called by the names of those things whereof they are resemblances, as we are wont to say when we behold a painted table or wall, This is Cicero, this Sallustius. Whereof, seeing the celebration of the Sacrifice is a lively resemblance of the passion of Christ, which is the true sacrificing of Him, it may rightly be named the sacrificing of Him.’

“ ‘Peter Lombard, Thomas, and the other schoolmen,’ saith Bellarmine,<sup>2</sup> ‘were not careful of that which is now in question touching the daily renewed real sacrificing of Christ, but only sought to show how the Sacrifice of the Mass may be called an offering of Christ, that is, a slaying of Him; and therefore, proposing the question, whether the Eucharist be a Sacrifice, they answer, for the most part, that it may be said to be an offering or Sacrifice, because it hath a resemblance of the true and real offering which was on the Altar of the Cross, and because it communicateth unto us the effects of the true and real killing of Christ.’ ”<sup>3</sup>

Again :—

“ In that therefore the Church doth offer the true Body and Blood of Christ to God the Father, it is merely *a representative Sacrifice*, and all that is done is but the commemorating and representing of that Sacrifice which was once offered on the Cross, but in that it dedicateth itself, which is the mystical Body of Christ, unto God, it is a true, but a spiritual Sacrifice, that is, an eucharistical Sacrifice of praise, thanksgiving, and of obedience due unto God. Christ, therefore, is offered and sacrificed on the Altar but sacramentally and mystically; in that in the Sacrament there is a commemoration and remembrance of that which was once done. Christ is not often slain, which once to think were abominable; but that which was once done

<sup>1</sup> *Expositio Missæ*, Lect. 85, fol. 183, b, Lugd., 1514.

<sup>2</sup> *Bellarmin. de Euchar.*, lib. v. (sive de Missa, lib. 1), cap. 15 (tom. iii. p. 403. Ven. 1721).

<sup>3</sup> *Field, Of the Church*, vol. ii. pp. 370-1.

is represented, that we might not forget the benefit bestowed on us, but rather be so stirred up and moved by this Sacrament, as if we saw the Lord Jesus hanging upon the Cross. The passion of the Lord, saith Cyprian, is the Sacrifice that we offer to God, that is, that we offer to the view of God, and represent unto Him. Neither is it to be marvelled at that we offer the true Body of Christ to revive the memory of the former Sacrifice, and to represent it unto God, seeing the Son of God was given unto us that we might oppose Him to the wrath of God as a reconciler, and that, distrusting our own strength, we might represent to the Father this most potent Sacrifice.”<sup>1</sup>

Cranmer cites Cyprian and St. Augustine on the Sacrifice, without disapprobation. He says:—

“For the cause why Cyprian and other old authors say that Christ made an oblation and offering of Himself in His Last Supper, was not that He declared there that He would suffer death, for that He had declared many times before; but the cause was, that there He ordained a perpetual memory of His death, which He would all faithful Christian people to observe from time to time, remembering His death, with thanks for His benefits, until His coming again. And, therefore, the memorial of the true Sacrifice made upon the Cross, as St. Augustine saith, is *called by the name of a Sacrifice*, as a thing that signifieth another thing is called by the name of the thing which it signifieth, although in very deed it be not the same.

“And the long discourse that you make of Christ’s true presence, and of the true eating of Him, and of His true assisting us in our doing His commandment, all these be true. For Christ’s Flesh and Blood be in the Sacrament truly present but spiritually and sacramentally, not carnally and corporally. And, as He is truly present, so is He truly eaten and drunken, and assisteth us; and He is the same to us that He was to them that saw Him with their bodily eyes.”<sup>2</sup>

“How is it possible to set out more plainly the diversity of the true Sacrifice of Christ, made upon the Altar of the Cross (which was the propitiation of sin), from the Sacrifice made in the Sacrament, than Lombardus hath done in this place? For the one he calleth the true Sacrifice, the other he calleth but a memorial or representation thereof; likening the Sacrifice made in the Lord’s Supper to a year’s mind or anniversary, whereat is made a memorial of the death of a person, and yet it is not His death in deed. So in the Lord’s Supper, according to His commandment, we remember His death, preaching, and com-

<sup>1</sup> *Field, Of the Church*, vol. ii. p. 73.

<sup>2</sup> *Cranmer’s Works*, vol. iii. pp. 160-1.—Answer to Gardyner. The Presence of Christ.



manding the same until His return again at the last day. And, although it be one Christ that died for us, and whose death we remember, yet it is not one Sacrifice that He made of Himself upon the Cross and that we make of Him upon the Altar or Table. For His Sacrifice was the redemption of the world; ours is not so. His was death; ours is but a remembrance thereof. His was the taking away the sins of the world; ours is a praising and thanking for the same. And, therefore, His was satisfactory; ours is gratulatory. *It is but one Christ that was offered then and is offered now*, and yet the offerings be diverse; His was the thing, and ours is the figure. His was the original, and ours is, as it were, a platform.<sup>1</sup>

“And now I have made it evident that Petrus Lombardus defaceth in no point my saying of the Sacrifice, but confirmeth fully my doctrine, as well of the Sacrifice propitiatory made by Christ Himself only, as of the Sacrifice commemorative and gratulatory made by the priests and people.<sup>2</sup>

“Hipinus saith that the old Fathers called the Supper of our Lord a Sacrifice propitiatory. I will not believe that Hipinus so said, until you appoint me both the book and place where he so saith. For the effect of his book is clean contrary, which he wrote to reprove the propitiatory Sacrifice, which the papists feign to be in the Mass. Thus indeed Hipinus writeth in one place:—‘*Veteres Eucharistiam propter corporis et sanguinis Christi præsentiam, primo vocaverunt sacrificium, deinde propter oblationes et munera quæ in ipsa Eucharistia Deo consecrabantur et conferebantur, ad sacra ministeria, et ad necessitatem credentium.*’ In which words Hipinus declareth that the old Fathers called the Supper of our Lord a Sacrifice for two considerations,—one was for the presence of Christ’s Flesh and Blood, the other was for the offering which the people gave there of their devotion, to the holy ministration and relief of the poor. But Hipinus speaketh here not one word of corporal presence, nor of propitiatory Sacrifice, but generally of presence and Sacrifice, which maketh nothing for your purpose, nor against me, *that grant both a Presence and a Sacrifice.* But when you shall show me the places where Hipinus saith that the old Fathers called the Lord’s Supper a propitiatory Sacrifice, I shall trust you the better and him the worse.”<sup>3</sup>

Archbishop Sharp says:—

“Now to the same use and purpose (say we) serves our Sacrament of *the Lord’s Supper*; or, as it was called by the

<sup>1</sup> *Cranmer’s Works*, vol. iii. pp. 538-9.

<sup>2</sup> *Ibid.* p. 540.

<sup>3</sup> *Ibid.* pp. 551-2.—The Sacrifice of Christ.

Ancients, the *Christian Sacrifice*. Not that we pretend in our Communion to offer up the real *Body* and *Blood* of Christ in Sacrifice to God, as the Papists do; for that (as the Apostle tells us) was once done by Himself upon the Cross, *and by that one offering He hath for ever perfected all them that are sanctified*; so that there is no need of any such offering any more. But we *commemorate* that Sacrifice which Christ has on this day made for us, and we thank God for it; and we heartily beseech Him that He would accept of it on our behalf, and that it may make atonement for all our sins. And we likewise feed upon it (as the Jews did upon their *Sacrifices*); that is to say, by *eating* of that *bread* which He made to be His *Body*, and drinking of that *cup* which He made to be His *Blood*. Now, in doing of this, we may be truly said both to offer up a Sacrifice to God, and likewise to keep a *feast* upon this Sacrifice. We offer up by *Commemoration* and *Thanksgiving* and hearty Prayer, that *Sacrifice* that was once offered by Jesus Christ at *Jerusalem*, near seventeen hundred years ago, for the Salvation of all mankind; and we partake both of the *Body* and *Blood* of that His Sacrifice, by partaking of the *Bread* and *Wine* that He has consecrated not only to be the *symbols* and *signs* of them, but to convey the real Benefits of His *Passion* and *Sacrifice* to all Believers. So that we may be truly said to *feed* at God's table whenever we receive the Sacrament."<sup>1</sup>

"To come to the other Sacrament (says Bishop Bull), the Eucharist, or Holy Supper; this is the most sacred and mysterious rite, the apex, the top and perfection of Christian worship, as the ancients term it, and therefore it ought to be performed with the greatest reverence and solemnity in every punctilio of it, according to the direction of our Church in her rubric to the Communion Office."<sup>2</sup>

This great luminary of our Church treated the question of Sacrifice, in his answer to Bossuet, distinguishing between the Roman Sacrifice of the Mass and the Catholic Sacrifice of the Holy Eucharist.

"But alas!" (he says) "these superadded Articles of the Trent Creed are so far from being certain truths, that they are most of them manifest untruths, yea, gross and dangerous errors. To make this appear, I shall not refuse the pains of examining some of the chief of them.

"The first Article I shall take notice of is this: 'I profess that in the mass is offered to God a true, proper, and propitiatory Sacrifice for the living and the dead; and that in the most Holy Sacrament of the Eucharist there is truly, and

<sup>1</sup> *Archbishop Sharp's Sermons*, vol. ii. p. 153 (Sixth Sermon).

<sup>2</sup> *Bishop Bull*, vol. ii. p. 23.—*Discourse on the Pastoral Office*.

really and substantially, the Body and Blood, together with the Soul and Divinity of our Lord Jesus Christ; and that there is wrought a conversion of the whole substance of the bread into the Body and of the whole substance of the wine into the Blood, which conversion the Catholic Church calls transubstantiation.' Where this proposition ('that in the mass there is offered to God a true, proper, and propitiatory Sacrifice for the living and the dead'), having that other of the 'substantial presence of the Body and Blood of Christ in the Eucharist' immediately annexed to it, the meaning of it must necessarily be this, that in the Eucharist the very Body and Blood of Christ are again offered up to God as a propitiatory Sacrifice for the sins of men. Which is an impious proposition, derogatory to the one full satisfaction of Christ made by his death on the Cross, and contrary to express Scripture (Heb. vii. 27, and ix. 12, 25, 26, 28, and x. 12, 14). It is true the Eucharist is frequently called by the ancient Fathers *πρόσφορα*, *θυσία*, an *Oblation*, a *Sacrifice*. But it is to be remembered, that they say also it is *θυσία λογική καὶ ἀναίμακτος*, a *reasonable Sacrifice*, a *Sacrifice without blood*, which, how can it be said to be, if therein the very blood of Christ was offered up to God?

"They held the Eucharist to be a commemorative Sacrifice, and so do we. This is the constant language of the ancient liturgies, 'We offer by way of commemoration;' according to our Saviour's words when he ordained this holy rite, *Do this in commemoration of me*.

"In the Eucharist then Christ is offered, not hypostatically, as the Trent Fathers have determined, for so he was but once offered, but commemoratively only; and this commemoration is made to God the Father, and is not a bare remembering or putting ourselves in mind of him. For every Sacrifice is directed to God, and the oblation therein made, whatsoever it be, hath him for its object, and not man. In the Holy Eucharist, therefore, we set before God the bread and wine, 'as figures or images of the precious Blood of Christ shed for us, and of his precious Body' (they are the very words of the Clementine Liturgy), and plead to God the merit of his Son's Sacrifice once offered on the Cross for us sinners, and in this Sacrament represented, beseeching him for the sake thereof to bestow his heavenly blessings on us.

"To conclude this matter. The ancients held the oblation of the Eucharist to be answerable in some respects to the legal Sacrifices, that is, they believed that our blessed Saviour ordained the Sacrament of the Eucharist as a rite of prayer and praise to God, instead of the manifold and bloody Sacrifices of the law. That the legal Sacrifices were rites to invoke God

by is evident from many texts of Scripture; see especially 1 Sam. vii. 9, and xiii. 12, Ezra vi. 10, Prov. xv. 8; and that they were also rites for praising and blessing God for his mercies appears from 2 Chron. xxix. 27. Instead, therefore, of slaying of beasts and burning of incense, whereby they praised God and called upon his name under the Old Testament, the Fathers, I say, believed our Saviour appointed this Sacrament of bread and wine as a rite whereby to give thanks and make supplications to his Father in his name. This you may see fully cleared and proved by the learned Mr. Mede, in his treatise entitled *The Christian Sacrifice*. The Eucharistical Sacrifice thus explained is indeed λογικὴ θυσία, a *reasonable Sacrifice*, widely different from the monstrous Sacrifice of the mass taught in the Church of Rome. . . .

“The ancient doctors, yea, and Liturgies of the Church, affirm the Eucharist to be *incrumentum sacrificium*, ‘a sacrifice without blood,’ which it cannot be said to be if the very blood of Christ were therein present and offered up to God.”<sup>1</sup>

Bishop Wilson on this subject says:—

“*Lord's Supper.*

“Private devotions at the Altar, taken out of the most ancient offices of the Church, to render our present Communion service more agreeable to apostolic usage, and more acceptable (I hope) to God, and beneficial to all that partake thereof. Until it shall please God to put it into the hearts and power of such as ought to do it, and restore to us the first service of Edw. VI., or such as shall be more conformable to the appointment of Christ and his Apostles, and their successors. Which may the Divine Majesty vouchsafe to grant, for his sake who first ordained this holy Sacrament. Amen.”

“*Before Service begins, kneeling at the Altar.*

“May it please Thee, O God, who hast called us to this ministry, to make us worthy to offer unto Thee *this Sacrifice* for our own sins, and for the sins of Thy people.”<sup>2</sup>

“*Upon placing the Bread and Wine upon the Altar.*

“Vouchsafe to receive these Thy creatures from the hands of us sinners, O thou self-sufficient God! who remembered us when we were without hope, and without God in the world, and hath made us Thy brethren and heirs of Thy kingdom. *May I atone Thee, O God, by offering to Thee the pure and un-*

<sup>1</sup> *Bishop Bull*, vol. ii. pp. 250-254.—*The Corruptions of the Church of Rome, in answer to the Bishop of Meaux's Queries.*

<sup>2</sup> *Sacra Privata*, p. 104, Ox. ed. 1854.

*bloody Sacrifice which Thou hast ordained by Jesus Christ. Amen.*

"But how should I dare to offer Thee this Sacrifice, if I had not first offered myself a sacrifice to Thee, my God?

"May I never offer the prayers of the faithful with polluted lips, nor distribute the bread of life with unclean hands.

"I acknowledge and receive Thee, O Jesus, as sent of God, a prophet, to make His will known to us, and His merciful purpose to save us; as our Priest who offered Himself an acceptable Sacrifice for us to satisfy the Divine Justice, and to make intercession for us; and as our king to rule and defend us against our enemies."<sup>1</sup>

*"Immediately after the Prayer of Consecration.*

"We offer unto Thee, our King and our God, this bread and this cup.

"We give Thee thanks for these and for all Thy mercies; beseeching Thee to send down Thy Holy Spirit upon *this Sacrifice*, that He may make this bread the Body of Thy Christ, and this cup the Blood of Thy Christ; and that all we, who are partakers thereof, may thereby obtain remission of our sins, and all other benefits of His passion."<sup>2</sup>

Saint Cyprian had written in one of his letters the following passage on the Sacrifice in the Eucharist:—

"Si Jesus Christus, Dominus et Deus noster, ipse est summus sacerdos Dei Patris, et *sacrificium* Patri seipsum primus obtulit, et hoc fieri in sui commemorationem præcepit; utique ille sacerdos vice Christi vere fungitur, qui id, quod Christus fecit, imitatur, et sacrificium verum et plenum tunc offert in Ecclesia Deo Patri, si sic incipiat offerre secundum quod ipsum Christum videat obtulisse."<sup>3</sup>

And Waterland thus deals with this passage:—

"I shall now pass on to Cyprian, to show how this matter stood, upon the *change* of language introduced in his time. We shall find him plainly speaking of the offering Christ's *Body and Blood*. This must be understood of an oblation subsequent to consecration, not in order to it; for Christ's Body and Blood, whether real or symbolical, are holy, and could want no sanctification or consecration. He further seems to speak of offering Christ himself, in this Sacrament, unto God, but *under the symbols of consecrated Bread and Wine*. That may be his meaning, and the meaning is good, when rightly apprehended; for there was nothing new in it but the language or the manner of expression. What the elder Fathers could have called, and did

<sup>1</sup> *Sacra Privata*, p. 104, Ox. ed. 1854.

<sup>2</sup> *Ibid.* p. 106.

<sup>3</sup> *Cyprian*, Ep. lxiii. p. 609, cited in *Waterland's Works*, vol. vii. p. 375.

call, the *commemorating* of Christ, or the *commemorating* His *passion*, His *Body* broken, or *Blood* shed, that Cyprian calls the *offering* of Christ, or of His *passion*, etc., because, in a large sense, even *commemorating* is *offering*, as it is presenting the thing or the person so commemorated in the way of prayer and thanksgiving before God. I do not invent this account for the clearing a difficulty, but I take it from Cyprian himself, whose own words show that the Eucharistical *commemoration* was all the while in his mind, and that was all he meant by the oblation which he there speaks of, using a new name for an old thing. I shall show in due time that the later Fathers, who followed Cyprian's language in this particular, and who admitted this *third oblation* (as some have called it) as well as he, yet when they came to explain, interpreted it to mean no more than a solemn *commemoration*, such as I have mentioned."<sup>1</sup>

"This is not the place to examine critically what the ancients meant by the *Sacrifice* or *Sacrifices* of the Eucharist; it will deserve a distinct chapter in another part of this work. But, as I before observed of oblation, that, anciently, it was understood sometimes of the *lay offering*, the same I observe now of *Sacrifice*; and it is plain from Cyprian. Besides that notion of *Sacrifice*, there was another, and a principal one, which was conceived to go along with the *Eucharistical* service, and that was, the notion of *spiritual Sacrifice*, consisting of many particulars, as shall be shown hereafter; and it was on the account of one, or both, that the Eucharist had the name of *Sacrifice* for the two first centuries. But by the middle of the third century, if not sooner, it began to be called a *Sacrifice*, on account of the *grand Sacrifice* represented and commemorated in it; the *sign*, as such, now adopting the name of the *thing signified*. In short, the *memorial* at length came to be called a *Sacrifice*; as well as an *oblation*: and it had a double claim to be so called; partly as it was in itself a *spiritual* service, or *Sacrifice*, and partly as it was a representation and commemoration of the high tremendous *Sacrifice* of Christ God-man. This last view of it, being of all the most awful and most endearing, came by degrees to be the most prevailing acceptance of the *Christian Sacrifice*, as held forth in the Eucharist. But those who styled the Eucharist a *Sacrifice* on that account, took care, as often as need was, to explain it off to a *memorial* of a *Sacrifice* rather than a strict or proper *Sacrifice*, in that precise view. Cyprian, I think, is the first who plainly and directly styles the Eucharist a *Sacrifice* in the *commemorative* view, and as *representing* the grand *Sacrifice*. Not that there was any-

<sup>1</sup> *Waterland's Works*, vol. vii. p. 30.

thing *new* in the *doctrine*, but there was a *new application* of an old name, which had at the first been brought in upon other accounts.”<sup>1</sup>

Hey, in his Lectures on the Articles, says :—

“It may be objected that the Gospel Institutions are not to be made complicated and abstruse unnecessarily. Is not the ‘simplicity that is in Christ’ best observed by taking the Sacrament of the Lord’s Supper as a *mere commemoration*? Bishop Cleaver answers this objection in his first discourse; and Dr. Balguy answers it, in effect, in his Seventh Charge. If you make the Lord’s Supper, as it was instituted by Christ, a mere commemoration, you make it a strange and unintelligible rite; for what can be more strange than eating the flesh and drinking the blood of one who is to be regarded only as an instructor and benefactor? If we had been ordered in the Sacrament to kill an animal and shed its blood; or only to break bread, and pour out wine; the rite would be intelligible, as a simple memorial. It would have represented Christ’s death, merely *as a death*; but it would have been a *different* rite from ours. Now conceive it as a feast on a *Sacrifice*, and all is easy and simple. We, indeed, are not in the habit of sacrificing; but what is that? Who could not understand that, when Sacrifices were in use, part of the Victim was served up at a religious *feast*; and all who partook of the material feast were understood to partake of the spiritual benefits of the Sacrifice. Christ was our Victim; on his body we do not feast literally, because it is in heaven; but he appointed bread to represent it. On that we can feast, and so partake of his body; that is, feast upon the Victim. Such bread is ‘the Bread of Life,’ because, by his own appointment, it represents his *Flesh*. This appears to me plain and simple.”<sup>2</sup>

I will now advert to the language of Mr. Keble, in his work on Eucharistic Adoration, published in 1857.

“The true oblation” (he says) “in the *Christian Sacrifice* is in no sense earthy or material. It is altogether spiritual; the chief of those spiritual Sacrifices in the offering whereof consists the common priesthood of us all. The Eucharist comprehends them all in one; and has, besides, peculiar to itself, that which alone causes any of them to be acceptable. For the true oblation in the Eucharist is not the bread and wine; that is only as the vessel which contains or the garment which veils it; but that which our Lord by the hands of the priest offers to His Father in the Holy Eucharist is

<sup>1</sup> *Waterland’s Works*, vol. vii. pp. 37, 38.

<sup>2</sup> *Hey’s Lectures on Divinity*, vol. iv. p. 348.

His own Body and Blood, the very same which He offers and presents to Him, with which, as St. Paul says, He appears before Him *now*, night and day continually in heaven, in commemoration of His having offered it once for all in His passion and death on the Cross. It is the one great reality, summing up in itself all the memorial Sacrifices of old. In the Christian scheme, it is 'proportionable' to them; and of course it stands in the same rank and relation to them, as the other antitypes in the Gospel to their several types and shadows in the law.

"The memorial, therefore, made of Christ before the Father in Holy Communion is as much more real, more glorious, more blessed, than all the memorial Sacrifices of old; than the yearly paschal lamb, for instance, as the one atoning Sacrifice on the Cross surpassed the lamb slain at the first Pass-over; as the descent of the Holy Spirit at Pentecost surpassed the fire on the burnt-offering; as Christ is more glorious than Aaron or Melchisedec; heaven, with the tree of life and the waters of life, more blessed than the land flowing with milk and honey; the new Jerusalem more true and real than the old; he who thinks most highly, and therefore least inadequately, of that holy and divine Sacrament, cannot well say, or conceive anything of it higher than this, that it is, in the strict sense of the word, 'that which the Gospel hath *proportionable* to ancient Sacrifices.'"<sup>1</sup>

And in his sermons preached before the University of Oxford in 1848, he says:—

"And first, for doctrine. Have we not indeed, in the words of the text alone, the substance of the Eucharistical office, in both its parts—both in its sacrificial and its sacramental character? 'I sanctify myself'—there is the Sacrifice, that they also may be sanctified 'through the truth'—there is the Sacrament. Are not these plainly the guiding, the prevailing thoughts, which He, our great teacher and exemplar, would have us to associate with the services of His sacred altar?

"For thus it is:—After ordaining the Eucharist for a remembrance or memorial of himself, having also by solemn prayer commended to His Father his Apostles first, and in them all who should believe on him through their word, He sums up the effect of what He was doing and saying. 'For their sakes I am sanctifying myself, that they also may be sanctified through the truth.'

"Our blessed Lord then was sanctifying Himself, that is, setting Himself apart, devoting or offering up Himself, his own Body and Blood, to be the conveyance of like sanctifica-

<sup>1</sup> *Keble on Eucharistic Adoration*, pp. 70, 71.



tion to us. He was making Himself a Sacrifice, that we being joined to Him might be holy and lively Sacrifices. And all this 'through the truth,' by participation—namely, of Him, who is the very truth and reality, the substance of which the old Sacrifices were shadows.

"I repeat it, this one saying of Christ conveys apparently in itself, the two chief points of the evangelical doctrine concerning the holy and blessed Eucharist; first, that it is His memorial Sacrifice; a means of obtaining God's favour and pardon for all such as truly repent; next, that it a most high Sacrament, a mean whereby we are united to Christ, and so made more and more partakers of His righteousness here, and of His glory hereafter.

"When we say 'a memorial Sacrifice,' we mean that the offering in the Holy Communion does not only put *us* in mind of the great unspeakable things which Christ has done for us, but also that it puts God in mind of them, so the Scripture vouchsafes to speak, over and over putting into our mouth the word 'remember,' when we are being taught to pray. So our Lord, in the very words of Consecration, 'This do for the Memorial of Me.' So the meat and bread offering mentioned so often in the Old Testament, especially in that Manual for Sacrifice, the Book of Leviticus, is constantly said to be offered 'for a Memorial;' and without all controversy it was a type and shadow of that which we Christians present on our altars.

"The Eucharist, therefore, is a memorial or commemorative Sacrifice; that is, God graciously receives what we break, pour out, and offer, as though His Son presented before Him His very own Body and Blood. He received it as a continuation of that first awful Eucharist, according to the saying of the wise man, 'I know that whatsoever God doeth, it shall be for ever.' 'He smelleth,' as the Bible speaks, 'a sweet savour,' and is favourable and merciful unto us for the sake of Christ so offering Himself before Him."<sup>1</sup>

Cleaver, Bishop of St. Asaph, preached several sermons on the Holy Eucharist before the University of Oxford in 1787-1790. In them he dwells largely on the doctrine that the Lord's Supper was a *Feast on a Sacrifice*. From these I make the following extracts:—

"But that I may not repeat what has been already urged upon many of these words, I will simply call to your recollection their general relation to a *Sacrifice* by a bare recital of the institution as it is given by St. Matthew, which is as

<sup>1</sup> *Sermons by the Rev. John Keble, M.A.* Published by Parker (1848), Oxford, pp. 259-262.

follows: 'And as they were eating, Jesus took bread, and *blessed* it, and brake it, and gave it to the disciples and said, Take eat, this my *body*; and he took the cup, and gave it to them, saying, *Drink* ye all of it; for this is my blood of the *New Testament* which is *shed* for many for the *remission of Sins*.' Here, I think, I might safely rest my general argument, that easy as the connection between the parts of this proposition, 'Take eat, this my body,' and again of this, 'Drink ye all of this, for this is my blood,' may appear when unexamined, and few as the words of institution are, the real connection in the parts of the two propositions can be explained satisfactorily upon no other supposition than that of their allusion to a *Sacrifice*, without which a great share of the few words in each of the passages reciting the institution will be superfluous and unintelligible, and all of them ill explained. I may, therefore, I hope, without being unduly sanguine, assert that *the idea of a Sacrifice is the primary and leading idea of this institution.*"

The Bishop then says that it does not exactly correspond with any one species of Sacrifice under the Mosaic law.

"The truth is, if it be a representation or application of the Sacrifice of the death of Christ, it must correspond not exactly with one but essentially with all the Sacrifices of the law. 'For as all the Sacrifices were types of this great event, and as the event itself must correspond to its own types, so must whatever institution be made to represent that event. *The rite therefore which should fully show the Lord's death, must show the Sacrifice made by that death,*' which doubtless was St. Paul's meaning; a Sacrifice upon which alone the merits and efficacy of that death are founded; for it is in the blood of Christ sacrificially shed that the Scriptures found the notion of propitiation, of atonement, and of forgiveness.

"Ancients and moderns have considered it under distinct points of view; used distinct appellations:—e.g. '*Christian Sacrifice*,' '*Christian Passover*,' '*Christian Oblation*,' '*the Eucharist*,' etc., the language of our Church, '*a continual remembrance of the Sacrifice of the death of Christ.*'"

(P. 22): "I have not contended that the institution is a *material and proper Sacrifice*, because the command is not, as in the vision shown to St. Peter, '*Slay and eat*,' but eat—'*This is my body, which is broken for you*;' drink, '*This is my blood, which is shed for you.*' Thus St. Paul,—'*Christ our Passover is slain, therefore let us keep the feast.*' And again, when he compares the Table of the Lord, not the Altar, with the Table of Devils, it is evident that he considers it as *a feast upon a Sacrifice*, unless we could suppose the Apostle

to draw his argument from a case not parallel. There is, too, a remarkable passage in Ezekiel (xxxix. 17), the words of which on the subject are peculiarly apposite to this point, where the fowls are invited 'to eat the flesh and drink the blood of the sacrifice,' to which it is added, 'Thus shall ye be filled at my Table.'

Bishop Moberly's opinion is as follows:—

"Shall I ask," he says, "whether the feast which they there celebrate is or is not a Sacrifice? Brethren, bear with me while I venture to say that I am not very careful, so far as I can judge, to answer the question. Indeed, it appears to me to be little more than a question of words, which bears upon no important issue. The feast is what it is; and whether that is or is not what constitutes a Sacrifice must depend altogether upon the precise meaning attached to the word 'Sacrifice,' and the definition given to it. There surely are good and innocent senses in which it may well and rightly be so called. There surely is a sense,—the highest,—that in which the actual offering of the Lord's Body and Blood upon the altar of the Cross was once offered, the only full, perfect, and sufficient Sacrifice, oblation, and satisfaction for the sins of the whole world,—in which we may not dare so to call it."<sup>1</sup>

"I know not why we should not rest content to speak in the language of St. Chrysostom, which I have already quoted, and to call the holy feast which we celebrate our *Θυσία*, or *Ἀναμνήσις τῆς Θυσίας*, our Sacrifice or recollection of the Sacrifice."<sup>2</sup>

I will conclude with two short extracts from the treatise of the present Bishop of Ely<sup>3</sup> on the Thirty-nine Articles.

Writing upon the 31st Article, he says:—

"It cannot be doubted that from the very first the Fathers spoke of the Eucharist under the name of an offering or sacrifice.

"The dread of the mass, which has prevailed generally among the Reformed Churches, has made the majority of their members fear to speak at all concerning an Eucharistic Sacrifice.

"Yet there have not been wanting, in the English Church especially, men of profound learning, deep piety, and some of them by no means attached to peculiar schools of doctrine, who have advocated the propriety of speaking of the *Christian Sacrifice*, and of adopting in some measure the language of the primitive Church concerning it."<sup>4</sup>

<sup>1</sup> *Moberly's Bampton Lectures*, pp. 174, 175.

<sup>2</sup> *Ibid.* p. 176.

<sup>3</sup> Now Bishop of Winchester.

<sup>4</sup> *Expos. of Thirty-nine Articles*, pp. 737, 745, 746.

The language of Mr. Bennett upon the subject of Sacrifice is consistent with the doctrine of a sacrament of commemoration, and does not necessarily imply a sacrifice of propitiation; and it does not, in my opinion, necessarily or directly conflict with the Articles of Religion, nor with the 82d Canon, nor with the passages selected from the office of the Holy Communion set forth in the criminal articles; nor has it exceeded that liberty of expression which has been used by the divines whom I have cited.

*Adoration of the Holy Elements.—Of Christ in the Holy Elements.*

With respect to the third category, the promoter alleges that the defendant has promulgated the following doctrines:—"In or by the passage lettered H, that Adoration or Worship is due to the consecrated Bread and Wine. In or by the passages lettered N, O, and S, that adoration is due to Christ, present upon the Altars or Communion Tables of the Church in the Sacrament of the Holy Communion under the form of bread and wine, on the ground that under their veil is the sacred Body and Blood of our Lord and Saviour Jesus Christ."

Mr. Bennett in the earlier editions of his pamphlet used these expressions:—"Who myself adore and teach the people to adore the consecrated Elements, *believing Christ to be in them—believing that under their veil is the Sacred Body and Blood of my Lord and Saviour Jesus Christ.*"

It seems to me that the first of these sentences does contravene the mind of the Church, as expressed in the declaration about kneeling, which is at the close of the Order of the Administration of the Lord's Supper; and though, as will be seen, the words are not without some countenance from considerable authority, they are in my judgment to be reprehended.

The words of the declaration are:—"Yet, lest the same kneeling should by any persons, either out of ignorance or infirmity, or out of malice or obstinacy, be misconstrued or depraved, it is hereby declared that *thereby no adoration is intended, or ought to be done, either unto the Sacramental Bread or Wine there bodily received, or unto any corporal presence of Christ's natural Flesh and Blood.* For the Sacramental Bread and Wine remain still in their very natural substances, and therefore may not be adored (for that were Idolatry to be abhorred of all faithful Christians); and the natural Body and Blood of our Saviour Christ are in Heaven, and not here; it being against the truth of Christ's natural Body to be at one time in more places than one."

Mr. Bennett has, however, been apprised of the error into which his slight acquaintance with the subject has led him, and in his latest edition this reprehensible language is withdrawn and the following language substituted for it:—“*Who myself adore and teach the people to adore Christ present in the Sacrament, under the form of Bread and Wine, believing that under their veil is the sacred Body and Blood of my Lord and Saviour Jesus Christ.*”

I have dealt with the question as to the expression “under the form of Bread and Wine,” and have decided that it may be lawfully used. It remains to be considered whether to profess and teach the adoration of Christ present in the Sacrament is unlawful.

Such a doctrine is not at variance with the declaration of kneeling which discountenances the worship of the elements and of the corporal presence of Christ.

Nor is it repugnant to the 28th Article of Religion, as suggested by the promoter, for it contains no declaration against the Adoration of the Spiritual Presence of Christ in the Holy Eucharist.

Entertaining this opinion, it is perhaps hardly necessary to refer to authorities in favour of the proposition, that the Adoration of the Spiritual Presence of Christ in the Eucharist may lawfully be maintained.

Some, however, I will mention.

In the dialogue between Ridley and his Papal adversary are these passages:—

“GLYN.—Augustine against Faustus, ‘Some there were which thought us, instead of bread and of the cup, to worship Ceres and Bacchus.’ Upon this place I gather, that there was an adoration of the Sacrament among the Fathers; and Erasmus, in an epistle to the brethren of Low Germany, saith that the worshipping of the Sacrament was before Augustine and Cyprian.

“RIDLEY.—We do handle the signs reverently: but we worship the Sacrament as a Sacrament, not as the thing signified by the Sacrament.

“GLYN.—What is the symbol or Sacrament?

“RIDLEY.—Bread.

“GLYN.—Ergo, we worship bread.

“RIDLEY.—There is a deceit in this word ‘adoramus.’ We worship the symbols, when reverently we handle them. We worship Christ wheresoever we perceive his benefits; but we understand his benefits to be greatest in the Sacrament.

“GLYN.—So I may fall down before the bench here, and worship Christ; and if any man ask me what I do, I may answer, I worship Christ.

"RIDLEY.—We adore and worship Christ in the Eucharist. And if you mean the external Sacrament, I say, that also is to be worshipped as a Sacrament."<sup>1</sup>

Bishop Poyntet, in his treatise on the Eucharist, says:—

"Here a scruple arises. If we believe the grace and virtue of the real body to be conjoined with the bread and wine, we shall seem to attribute too much to the elements, and hence a twofold evil will arise—(1) the adoration of the Sacrament and the peril of idolatry, and (2) that the wicked who partake of the Sacrament, eat at the same time the body of Christ, and are partakers of His grace. But this latter cannot take place, for 'Whoso eateth me,' saith Christ, 'shall live for ever,' and 'if any man eat of this bread he shall live for ever,' which cannot be understood of the wicked."

That is, so as to be partakers of His grace, as is more fully explained in the passage I have already given.

"As to the worship, I reply, that the ancients partook of the Sacrament with the utmost reverence and honour, and yet were safe from idolatry. . . . For, as to their worshipping what they received, Augustine plainly testifies on the xcviith Psalm, when he says, 'He has given the same flesh to you to eat to salvation, but no one eats that flesh without first adoring, and not only do we not sin by adoring, but we sin by not adoring.' Also, Prosper, 'In the species of bread and wine which we see, we honour invisible things, that is, the Flesh and Blood.' Also, Eusebius Emissenus, 'When thou ascendest the reverend altar, to be filled with spiritual food, behold, honour, and wonder at the holy body of thy God.' And Chrysostom (1 Cor. x., Hom. xxiv.), 'I will show you upon earth what is worthy of this highest honour. For, as palaces, not the walls, not the golden roof, but the royal body seated on the throne, is the most excellent of all; so also is the Royal Body in Heaven now proposed to your view on earth. I do not show you angels nor archangels, nor the heaven of heavens, but the Lord of all these.' Ambrose (1 Cor. xi.), 'The Eucharist is spiritual medicine, which, tasted with reverence, purifies the devout receiver.' And again, 'The Holy Communion is to be approached with a devout mind, and with fear, that the mind may know that reverence is due to Him whose Body it approaches to receive.' Theodoret (Dial. 2), 'Nor after sanctification do those mystical symbols differ from their proper nature, but remain in their former substance, and figure, and appearance (species), and are therefore both seen and felt as before. But they are understood to be that which they are made, and are believed to be so, and are worshipped as being the things

<sup>1</sup> *Works*, p. 236.

which they are believed.' From this and other places, it is easily understood with what honour, with what reverence, the ancients approached to the Holy Communion. Nor is this to be wondered at, when they believed that they took, in that bread, the truth, nature, and virtue of the true Body of Christ, and were far from idolatry, being diligently instructed and taught that they did not worship the outward sign, but the inward virtue, which Augustine shows by these words (*De Doct. Christ.*, lib. iii. cap. 9): 'For he but subserves the sign who performs or venerates any significant thing, not knowing what it signifies; but he who performs or venerates a useful sign instituted by God, the power and signification of which he understands, does not venerate the transient thing which he sees, but rather that to which all such things are to be referred.' And again, afterwards, 'At this time, by the resurrection of our Lord Jesus Christ, a more manifest proof of our liberty has taken place, nor are we burdened with the heavy load of those signs which we now understand, but the Lord and apostolic discipline have handed down, in place of many, some few things, and easy to be performed, as the Sacrament of Baptism, and the celebration of the Body and Blood of the Lord, which each person when he receives, being well instructed, knows what they signify, and worships them, not with carnal servitude, but with spiritual liberty.'"

Thorndike says:—

"I suppose that the Body and Blood of Christ may be adored wheresoever they are, and must be adored by a good Christian, where the custom of the Church which a Christian is obliged to communicate with requires it. . . .

"But I suppose, further, that the Body and Blood of Christ is not adored nor to be adored by Christians, neither for itself nor for any endowment residing in it, which it may have received by being personally united with the Godhead of Christ, but only in consideration of the said Godhead, to which it remains inseparably united, wheresoever it becomes. For by that means whosoever proposeth not to himself the consideration of the Body and Blood of Christ as it is of itself and in itself a mere creature (which he that doth not on purpose cannot do), cannot but consider It as he believes It to be, being a Christian; and considering It as It is, honour It as It is, inseparably united to the Godhead, in which and by which it subsisteth, in which, therefore, that honour resteth, and to which it tendeth—so the Godhead of Christ is the thing that is honoured, and the reason why it is honoured, both. The Body and Blood of Christ, though It be necessarily honoured because necessarily united to that which is honoured, yet is It only

the thing that is honoured, and not the reason why It is honoured, speaking of the honour proper to God alone.

"I suppose, further, that it is the duty of every Christian to honour our Lord Christ as God subsisting in human flesh, whether by professing Him such, or by praying to Him as such, or by using any bodily gesture, which by the custom of them that frequent it may serve to signify that indeed he takes Him for such, which gesture is outwardly that worship of the heart which inwardly commands it.

"This honour, then, being the duty of an affirmative precept, which, according to the received rule, ties always (though it cannot tie a man to do the duty always, because then he should do nothing else), what remains but a just occasion to make it requisite, and presently to take hold and oblige.

"And is not *the presence thereof* in the Sacrament of the Eucharist *a just occasion*, presently to express by the bodily act of adoration, that inward honour which we *always carry towards our Lord Christ as God?* Grant that there may be question whether it be a just occasion or not:" [he goes on to say in substance, that] "supposing the custom of the Church to have determined it, it shall be so far from an act of idolatry, that it shall be the duty of a good Christian;" . . . but that "if the Church hath not determined it" (though for some occasions it may become offensive and not due), "yet it can never become an act of idolatry."<sup>1</sup>

Dean Brevint in his *Christian Sacrament and Sacrifice* says:—

"The second is an act of adoration and reverence when he looks upon that good hand that hath consecrated for the use of the Church the memorial of these great things. I cannot, without some degree of devotion, look on any object that in anywise puts me in mind of the sufferings of my Saviour, and if I did perceive but any cloud somewhat like them, although it were but casual, I would not neglect the accident that had caused that resemblance, but since the good hand of my God hath purposely contrived it thus to set before me what I see, and since by His special appointment these representatives are brought in hither for this Church, and among all the rest for me, I must mind what Israel did when the cloud filled the tabernacle. I will not fail to worship God as soon as these sacraments and gospel clouds appear in the sanctuary. Here I worship neither sacrament nor tabernacle, but I will observe the manner that Moses, David, and all Israel have taught me to receive poor elements with after the institution of God hath once raised them to the estate of mysteries. Neither the ark nor any clouds were ever adored in Israel; but sure it is the

<sup>1</sup> *Laws of the Church* Book iii. chap. xxxi. §§ 1-10.



ark was considered quite otherwise than an ordinary chest, and the cloud than a vapour, as soon as God had hallowed them both to be the signs of His presence. Therefore, as the former people did never see the Temple or cloud, but that presently at that sight they used to throw themselves on their faces, so I will never behold these better and surer sacraments of the glorious mercies of God, but as soon as I see them used in the Church to that holy purpose that Christ hath consecrated them to, *I will not fail both to remember my Saviour who consecrated those sacraments, and to worship also my Saviour whom those sacraments do represent.*"<sup>1</sup>

Bishop Andrewes in his controversy with Bellarmine, setting forth the true doctrine of the Church of England, and contrasting it with that of Rome, says:—

"In *adoratione Sacramenti*, ad limen ipsum turpiter impingit. *Sacramenti* ait, id est, *Christi Domini* in Sacramento, miro, sed vero modo præsentis. Apage vero. Quis ei hoc dederit? *Sacramenti*, id est, Christi in Sacramento. Imo, Christus ipse *Sacramenti* res, in, et cum Sacramento; extra, et sine Sacramento, *ubi, ubi est adorandus est*. Rex autem Christum in Eucharistia vere *præsentem*, vere et adorandum statuit, rem scilicet *Sacramenti*, at non *Sacramentum*, terrenam scilicet partem, ut Irenæus, visibilem, ut Augustinus. . . . Nos vero et in mysteriis carnem Christi adoramus, cum Ambrosio, et non, id, sed Eum qui super altare colitur. Male enim, quid ibi colatur, quærit Cardinalis, cum quis, debuit, cum Nazianzenus, Eum dicat, non id. Nec carnem manducamus, quin adoremus prius, cum Augustino, et *Sacramentum* tamen nulli adoramus."<sup>2</sup>

Still more emphatic is the language of Bishop Taylor:—

"Place thyself upon thy knees in the devoutest and humblest posture of worshippers, and think not much in the lowest manner to worship the King of men and angels, the Lord of Heaven and Earth, the great Lover of Souls, and the Saviour of the Body, Him whom all the angels of God worship, Him whom thou confessest worthy of all, and whom all the world shall adore, and before whom they shall tremble at the Day of Judgment. *For if Christ be not there after a peculiar manner, whom or whose body do we receive? But if He be present to us, not in mystery only, but in blessing also, why do we not worship?* But all the Christians always did so from time immemorial. 'No man eats this flesh unless he first adores,' said St. Austin, 'for the wise men and the barbarians did worship this body in the manger, with very much fear and reverence. Let us,

<sup>1</sup> *Christian Sacrament and Sacrifice*, s. ii. 5, 8. Part of this cited in the *Eucharistica* published by the Bishop of Oxford, 1861.

<sup>2</sup> *Responsio ad Card. Bellarmin. Apolog.* pp. 266, 267.

therefore, who are citizens of heaven, at least not fall short of the barbarians. But thou seest Him not in the manger, but on the altar. And thou beholdest Him not in the Virgin's arms, but represented by the Priest, and brought to thee in sacrifice by the Holy Spirit of God.' So S. Chrysostom argues, and accordingly this reverence is practised by the Churches of the East, and West, and South, by the Christians of India, by all the Greeks, as appears in their answer to the Cardinal of Guise, by all the Lutheran Churches, by all the world, says Erasmus, only now of late some have excepted themselves. But the Church of England chooses to follow the reason and piety of the thing itself, the example of the primitive Church, and the consenting voice of Christendom."<sup>1</sup>

And again:—

"One thing I desire to warn you of, that is, that these phrases (scil. in the Fathers) of '*Adorato Altari*,' and *προσπύρρειν τῷ θυσιαστηρίῳ*, must be understood warily, and as they were meant; not that any Divine adoration was given to the altars either relatively or transitively; but they are the metonymical expressions of the subject. For the adjuncts; *adoratis altaribus*; that is, *adorato Christo præsenti in altaribus*, *inclinato capite ad altare*, that is, *inclinato capite ad Deum ibidem atque in sacris residentem*; we have good warrant to authorise this expression."<sup>2</sup>

I conclude my extracts from English divines with the following passage from Mr. Keble's work on *Eucharistic Adoration*, published in 1857:—

"Thus we seem to have evidence irresistible that down to the beginning of the ninth century—*i.e.* through all the ages of comparatively unbroken unity in the Church, the Body and Blood of the Man Christ Jesus, of Him who is God and Man, was adored as present after consecration in the Eucharist—*i.e.* Christ Himself was adored as present by the presence of His Body and Blood. Neither the depravers of the faith on the one hand, nor the maintainers of purity of worship on the other, ever seem to have found any difficulty in that point. Who can help concluding that it came down direct from the Apostles, especially considering what I will venture to call the strong presumption made out in favour of it from Holy Scripture and natural piety. It will have been seen that both St. Ambrose and St. Augustine use expressions and arguments which would be quite unwarrantable, unless they knew the practice to be a real apostolical tradition. St. Ambrose's '*hodieque*,' and St. Augustine's '*Nemo manducat, nisi qui prius*

<sup>1</sup> *Worthy Communicant*, chap. vii. sect. 1, par. 10; Heber's ed. vol. xv. p. 671.

<sup>2</sup> *Taylor's Works*, vol. v. p. 315. (Eden's ed.)

*adoraverit*,' would be neither of them honest sayings, were they not uttered under that conviction; and their arguments, grounded as they are on the two great and simple verities of the Incarnation and the Real Presence, are of course good for all times as well as for their own."<sup>1</sup>

I have noticed the historical fact that Cranmer's tendencies became strongly Lutheran before he died, and that the Council of Augsburg very materially influenced the language of our Articles.<sup>2</sup> Chemnitz, a very stout Lutheran, wrote an examination of the Council of Trent, in which examination, while he strongly condemned Transubstantiation, he defended the worship of our Lord in the Holy Elements. The passage is not unimportant; it is as follows:<sup>3</sup>—

"First, it must be shown, what in this fifth chapter and sixth canon is the matter of controversy. For some things, I readily admit, are uncontroverted. For that Christ, God and Man, is to be adored, no one but an Arian denies. And that His human Nature also, on account of its union with His Godhead, is to be adored, no one but a Nestorian questions. For when the Eternal Father brought the Only Begotten Son into the world, He saith, Let all the Angels worship Him. As Matthew also plainly beareth witness (c. xxviii.) that the Apostles in Galilee worshipped Christ. It is certain, moreover, that the adoration of God is not tied to place or time (John iv., 1 Tim. ii.) *Christ then at all times, and in all places, is to be adored.* If then we believe that Christ, God and Man, is, in a peculiar mode of presence and of grace, present at the celebration of His Supper, so that he there, truly and substantially, exhibits to communicants His own Body and Blood, whereby He willeth so to unite Himself with us, that to each who receives with faith, He, by this most precious pledge, applies and seals the gifts of the New Testament, which through the giving up of His Body, and the shedding of His Blood, He obtained for His Church;—if, I say, we believe these things truly, from our heart, it neither can nor ought to be *but that faith should venerate and adore Christ present in that action.* So Jacob (Gen. xvii.), Moses (Exod. xxxiv.), Elijah (1 Kings xix.), had no special command to worship God in those places; but since they had a general command to

<sup>1</sup> Pp. 112, 113.

<sup>2</sup> Archbishop Laurence, *Bampton Lectures*, Lect. i.

<sup>3</sup> Chemnitz or Chemnitius, born 1522, died 1586; in 1554 he wrote, among other works, "*Repetitio sanæ doctrinæ de vera præsentia corporis et sanguinis Domini in cœna sacra*," Leipzig, 1554; and in 1585 "*Examen Concilii Tridentini*," Frankfort, 1585, which has been translated into English. This work had a great reputation.

worship God everywhere, and were certain that God was truly *present under outward and visible symbols*, and that He was revealing Himself there in a special and gracious manner, they assuredly worshipped God Himself there, whom they believed to be present there. Nor would their faith have been true, if invocation or adoration—*i.e.* the honour due to God—had not followed.”<sup>1</sup>

\*  
*Conclusions of Fact.*

I am happy to arrive at the close of the premisses from which my legal conclusion is to be drawn.

I am conscious of the great length at which these premisses have been stated, and of the charge of prolixity to which so full a statement may expose me.

But while I have had a very arduous duty to discharge, I have not had that measure of assistance which a Court of Justice usually receives.

Mr. Bennett, who has caused all this litigation upon the subject of all others which ought not to be litigated, has not appeared before the Court of his Metropolitan to justify or defend himself.

The case has been argued on one side only.

This prosecution, it has been said, is directed against Mr. Bennett alone. But I cannot shut my eyes to the fact that I am not trying Mr. Bennett alone, but also divines eminent for piety, learning, and eloquence, whose opinions Mr. Bennett has borrowed, and in some respects caricatured, but does not allow, by the course which he has taken, to be vindicated or explained.

I have, therefore, thought myself obliged, not only to investigate according to the utmost of my power all the authorities which could throw light on the subject in dispute, but to express the result of my research with a fulness of detail which, if the case had been defended, would have been unnecessary for the purposes of justice.

I have thought it right that those who have to consider my judgment should be in possession of the authorities which have influenced it.

Being compelled to speak judicially as to the law of our Church relative to this great mystery, I hope, at least, that I have said nothing respecting the Supper of our Lord, which, in the words of our old divine and poet, may yet further tend to

“Make this banquet prove  
A Sacrament of war, and not of love.”

<sup>1</sup> Cited in *The Real Presence*, by the Rev. Dr. Pusey (Oxford, 1857), pp. 334, 335.

By the expressions, "The real, actual, and visible Presence of the Lord upon the Altars of our Churches," and "Who myself adore, and teach the people to adore the consecrated elements, believing Christ to be in them,—believing that under their veil is the sacred Body and Blood of my Lord and Saviour Jesus Christ,"—I have no doubt that Mr. Bennett has contravened the plain meaning and clear intent of the Formularies of the Church. But he has, in a later edition, withdrawn these words, and substituted others for them:—for "the real, actual, and visible Presence of our Lord upon the Altars of our Churches," he substitutes, "the real, actual Presence of our Lord, under the form of bread and wine, upon the Altars of our Churches;" and for the words "Who myself adore, and teach the people to adore, the consecrated elements, believing Christ to be in them," he substitutes the words, "Who myself adore, and teach the people to adore, Christ present in the elements under the form of bread and wine."

It is to be regretted that these material alterations are unaccompanied by any expressions of regret or self-reproach for the mischief which his crude and rash expressions have caused.

Mr. Bennett says:—

"My meaning, and that which passed through my mind in writing the original passages, was precisely the same as that which is now conveyed in the words substituted, but as the original words were liable to a different construction from that in which I used them, I therefore most willingly in this edition adopt another formula to express my meaning. The formula now adopted, and which, without any doubt, will convey the doctrine of the Real Presence, as the Church would teach it, has been suggested to me by him whose name stands at the head of this pamphlet" (that is to say, the Reverend E. B. Pusey, D.D.); "one to whom the whole Church would implicitly bow and all revere. I have no hesitation in adopting his words as my own fully and completely."

I do not, however, sit here as a critic of style, or an arbiter of taste, or a censor of logic. I have not to try Mr. Bennett for careless language, for feeble reasoning, or superficial knowledge. It is my duty to decide whether the words in which he now expresses himself, and which he professes to have since borrowed from a profound theologian, occupying one of the highest positions in the University of Oxford, do or do not contravene the Formularies of our Faith.

If I were to pronounce that they did so, I should be passing sentence, in my opinion, upon a long roll of illustrious divines, who have adorned our Universities and fought the good fight

of our Church, from Ridley to Keble,—from the divine whose martyrdom the Cross at Oxford commemorates, to the divine in whose honour that University has just founded her last College. Moreover, I could not pronounce such a sentence without disregarding judicial authority of the gravest kind.

For, as I have already observed, in Mr. Gorham's case the Judge said:—

“The writers whom we have cited are not always consistent with themselves, nor are the reasons upon which they found their positions always valid; and other writers of great eminence, and worthy of great respect, have expressed very different opinions. But the mere fact that such opinions have been propounded and maintained by persons so eminent, and so much respected, as well as by very many others, appears to us sufficiently to prove that the liberty which was left by the Articles and Formularies has been actually enjoyed and exercised by the members and ministers of the Church of England.”

And in Mr. Heath's case the Judge said:—

“If the doctrine in question has been held without offence by eminent divines of the Church, then, though perhaps difficult to be reconciled with the plain meaning of the Articles of Religion, still a Judge in my position ought not to impute blame to those who hold it. That which has been allowed or tolerated in the Church ought not to be questioned by this Court.”

In the case of *Essays and Reviews* the Privy Council held that even the words “everlasting fire” might be treated by a clergyman as not denoting the eternity of punishment, regard being had to the absence of any interpretation of the words in the Formularies, to the opinion of learned men respecting the words, and to a liberty of opinion exercised on the subject by certain divines without restraint.

Now I have shown that no mode of the Presence is defined by the Formularies, and by a large induction of instances that the present opinions for which Mr. Bennett is articulated are not, however loosely expressed, distinguishable in substance from those which have been maintained for many years by many great divines of our Church and by many learned men.

#### *Conclusions of Law.—Sentence.*

The conclusions of law at which I have arrived are the following:—

With respect to the first and uncorrected edition of his pamphlet, I pronounce that Mr. Bennett, by his language respecting the visible Presence of our Lord, and the adoration

of the Consecrated Elements, has contravened the law of the Church.

If Mr. Bennett had not renounced this language, and substituted other for it, I must have considered whether I ought not to pass a sentence of suspension upon him, accompanied by a monition to abstain for the future from such language.

The question is not now before me whether this retraction of Mr. Bennett would have sufficed to satisfy the severe provisions of the statute of Elizabeth (13 Eliz. c. 12), but whether this retraction, however ungraciously made, be not sufficient under the general law to indicate that he has finally abandoned the unlawful expressions which he had used.

I think on the whole they are sufficient for this purpose.

With respect to the second and corrected edition of his pamphlet, and the other work for which he is articulated, I say that the Objective, Actual, and Real Presence, or the Spiritual, Real Presence, a Presence external to the act of the Communicant, appears to me to be the doctrine which the Formularies of our Church, duly considered and constructed so as to be harmonious, intended to maintain. But I do not lay down this as a position of law, nor do I say that what is called the Receptionist Doctrine is inadmissible; nor do I pronounce on any other teaching with respect to the *mode* of Presence. I mean to do no such thing by this judgment. I mean by it to pronounce only that to describe the mode of Presence as Objective, Real, Actual, and Spiritual, is certainly not contrary to the law.

With respect to the other charges—namely, those relating to Sacrifice and Worship,—I pronounce that Mr. Bennett has not exceeded the liberty which the law allows upon the subjects.

I make no order as to costs.

## FAGG AND MUMMERY v. LEE.

*A monition in a civil suit to churchwardens to remove out of their parish church certain ornaments or articles alleged to be unlawful can only be sustained by a person who can show some interest, e.g. as a parishioner, in the matter of their removal; and that he has such interest must appear on the face of the monition.*

I DELIVERED judgment in this case on the 14th of November 1873. There was an appeal to the Privy Council, who affirmed my decision.

The case is reported in the Law Reports, in the Arches Court, 4 Admiralty and Ecclesiastical, page 135, in the Privy Council, 6 Privy Council Appeals, p. 38.

JUDGMENT.—This is an appeal from a judgment of the Commissary of Canterbury.

The question raised on this appeal is technical in point of form, but not unimportant in substance.

I must say in the outset that I have had difficulty in ascertaining from the minutes of the Court below what the exact course of the proceedings in this case have been. The minutes appear to be entered or kept in an unusual and irregular manner, but I gather from the observations of the learned Commissary that on February 22d, in this year, certain proceedings were taken by Mr. Lee, on behalf of the Archbishop, which on March 12th were discontinued and abandoned, and that on March 24th a monition was taken out against the vicar and churchwardens of St. Peter's, Folkestone, ordering them to show cause why certain ornaments called "stations" should not be removed from the Church.

The parties upon whom the monition has been served appear



and take a preliminary objection to the effect that it was not competent to the party who took out the monition to do so.

The suit is of a civil character. In the Ecclesiastical Court there are two kinds of suits,—civil and criminal.

The criminal suit, which is the promotion of the office of the Judge, that is of the Ordinary, is open to any person whom the Ordinary may think fit to allow to promote his office, by the institution of a criminal suit; such a suit is "*ad publicam vindictam*," and in some sense concerns every member of the Church.

The civil suit is not open to every one, even with the consent of the Ordinary, but only to those who have a personal interest in it.

It may indeed happen that a civil interest is protected or enforced by a criminal proceeding; but nevertheless the maintenance of this distinction between criminal and civil suits is by no means unimportant in principle.

The preservation of peace in the Church generally, as well as in particular parishes, may in great measure be dependent upon the observance of it.

The inhabitant of a parish in Cornwall may be interested in preserving ecclesiastical discipline, and enforcing ecclesiastical criminal law in a parish in Northumberland, and may be permitted by the proper Ordinary to take legal steps for this purpose, but it would be a great evil if he could interfere in matters relating to the fabric of a church in Northumberland in which he has no private interest, as to which he has sustained no civil injury, and as to which he may be acting in opposition to the wishes of the parishioners and the incumbent.

However this may be, the law as to the practice of the Ecclesiastical Court in this matter is perfectly well established; and indeed it was not at all disputed by the counsel for the respondents, whose contention was not that in a civil suit interest must not be shown, but that the time had not arrived when the interest of the party proceeding in this civil suit ought to be set out.

The suit, I may observe, is not the less of a civil character because the proceedings have been carried on by monition rather than by the more formal way of libel; but it is necessary, in order to remove some confusion which appears to have arisen, to state what the nature of this kind of civil proceeding by monition is.

In the first place, it is not to be confounded with a monition to execute the process of a Court after sentence given.

The monition in this case operates as a citation and something more; for it includes the order to appear which is the

proper function of a citation, and also orders a certain thing to be done by the party cited, which is the proper function of a monition.

The party so cited might have taken one of three courses: he might have appeared and demanded a more formal proceeding by way of libel, or by the less formal way of act on petition; but he might also have made his defence by appearing in obedience to the monition, and showing cause against it to the Court.

This is the course which he elected to pursue, which it would seem that the party proceeding himself intended, and which the Court contemplated.

It was therefore a suit conducted in the summary manner of monition, including citation, and appearance of parties.—I say of parties, because although for some reason unexplained Mr. Lee, on the 9th of June, prayed to appear by a proctor, he had extracted, on the 24th of March, the monition, which on that day was as the instrument recites “at the petition of the said John Benjamin Lee decreed.”

The monition having been so decreed, was served on the vicar and churchwardens on the 25th of March. On the 31st a proctor appeared for them. It should be here observed that the Commissary Court has not regular days of sitting, but they are appointed from time to time.

On the 14th of May, the following letter was sent to the proctor:—

“ 28 Great George St., Westminster,  
14 May 1873.

“ *Re* ST. PETER'S, FOLKESTONE.

“ DEAR SIRs,—It is my duty hereby to give you notice, as proctors for the Rev. C. J. Ridsdale (the incumbent) and the churchwardens, that the Commissary-General of the city and diocese of Canterbury has appointed Tuesday next, the 20th inst., at 11 o'clock A.M., in the public library of Lambeth Palace, to hear this case; and as the ‘stations of the cross’ have not been removed, as promised, the Commissary-General will not attend to any further application for delay.—I am, dear Sirs, yours faithfully,

JOHN HASSARD,

“ *Registrar of the diocese of Canterbury.*

“ To Messrs. Brooks, Tanner, & Jenkins,  
Proctors,  
7 Godliman St., E.C.”

This document must be treated as one of the minutes in the cause, amongst which it ought to have been found.

On the 26th of May a proctor appeared for the churchwardens, and prayed "the Judge to dismiss the said churchwardens from the suit with costs, on the ground that the said John Benjamin Lee did not show any interest of a public or private character on the face of the said monition."

This was, in my opinion, the proper way of raising the question as to the competence of the party proceeding. It appears to have been raised at the earliest period practicable. It was suggested that there ought to have been an appearance under protest, but this was not much insisted upon by counsel; and I think it was rightly answered, that in this case no objection is taken to the competency of the Court, but to the competency of the party instituting the suit; for although in cases of this kind there have been proceedings under protest, that course is more properly adopted when there is an objection to the jurisdiction of the Court.

The learned Judge of the Court below, however, on the 9th of June, rejected the prayer of the parties cited to be dismissed from the suit. From this sentence the appeal has been made to this Court.

I have already stated my opinion that this is a civil suit, and that a contrary opinion was not maintained by counsel for the respondents before me, but I must add that I do not quite follow the reasoning of the learned commissary upon this point. He does not and could not intend to say that this was a criminal suit, but he seems to have thought it belonged to a *tertium genus*, neither civil nor criminal.

I know of no authority in principle or precedent for this position; perhaps, however, I am mistaken as to the learned Judge's opinion upon this point.

In the arguments before me the following arguments were not controverted:—

- (1.) That the suit is of a civil character.
- (2.) That the party proceeding must show an interest.
- (3.) That at present he has not shown such interest.

To these undisputed points I may add:—

- (1.) That no precedent for a monition not showing an interest in a civil suit of this kind has been produced before me.
- (2.) That I have requested the registrar to search for such a precedent, and that he has not been able to find one.
- (3.) That the precedents, and especially a very recent and important one, support the opinion that the interest must be shown in the monition.

Upon this last point I will advert to the following cases.

Others might be found, but they seem to me sufficient for the present purpose ;—

In the *Duke of Portland v. Bingham* (1 Haggard Consist. Rep., 159) two suits were instituted. The first was civil, which failed on the ground that the Duke of Portland had no interest ; the proceedings were by citation to bring in a license ; the second was criminal, which failed on other grounds. In the civil case Dr. Bingham appeared under protest, alleging no interest in the Duke. After considering the question of civil interests, Lord Stowell observes, “ There are other interests in which every man partakes, such as that of maintaining public order, etc. These are clear, direct, and universal, and will entitle any one to institute proceedings to preserve that order. But such proceedings must be *ad publicam vindictam*, and by criminal articles exhibited in due form, which is the usual way of trying such matters as the present, and the most convenient. In that case the question would be reduced to one point only—the right of the party who is the object of such proceedings ; whereas in civil suits a previous question may arise of equal difficulty, on the right and title of the party instituting the suit. This then is an important distinction.”

In the civil case Lord Stowell’s attention had been drawn to *Lyne v. Harris*, as an authority for the civil form of procedure, and his observation on it is remarkable. “ In that case,” he says, “ there was a civil injury sustained ” (p. 160). *Lyne v. Harris* (1 Lee, 146) was a proceeding by citation to show cause why a license should not be revoked. The citation was taken out by the vicar against a curate, who officiated without his leave in his parish.

The case of *Hopper v. Davis* (1 Lee, 640) was a decision by the High Court of Delegates. Chapel-wardens had cited a man to show cause why he should not be monished to take down a monument erected without a faculty. The Judge of the Court of York had granted the monition. Dr. Hay, one of the most learned civilians of this country, said arguendo (p. 647), “ First question, Whether this, which is a civil cause, is properly instituted ? The chapel-wardens have no interest ; but no man can commence,” observe the words, “ a civil cause that has not an interest.” The Judges delegate adopted this position, for they reversed the sentence of the Court below, and said, “ We were of opinion the suit was commenced in a wrong form ; a prosecution of this sort ought to be by articles.”

In later times it has been holden, where no objection is raised, that suits of this kind may be instituted in the civil form, but never unless the party proceeding to enforce the law has shown an interest in the first instance,

The Knightsbridge cases, *Beal v. Liddell*, *Westerton v. Liddell* (Moore's Special Report, 1857), as they are generally called, are directly in point.

In the first of these cases, questions as to the lawfulness of certain ornaments in the church were raised. The civil suit began by a citation, the words of which, as far as they are important to the present cause, were as follows :—

“ Charles James, by divine permission, Bishop of London, etc., etc. Whereas it hath been alleged and set forth before the Right Honourable Stephen Lushington, Doctor of Laws, our vicar general, and official principal of our Consistorial and Episcopal Court of London, lawfully constituted, by the proctor of James Beal, an inhabitant of that part of the district chapelry of Saint Paul's, Knightsbridge, which, though not formally assigned as a district to, is more immediately connected by its locality with the said chapel of ease, dedicated to St. Barnabas, in the county of Middlesex, and within our diocese and jurisdiction : That the chancel, etc., etc.”

Observe with what extreme care and precision the interest of Mr. Beal, who was commencing the suit, is set forth. He is described as an inhabitant of that part of the parish in which the chapel is situated, though no district has been formally assigned to it ; that is, he represents himself as being injured in his right as a parishioner, and as having a title as a parishioner to take legal proceedings.

But the force of this recent and well-considered precedent goes further. The Privy Council allowed some, and disallowed other ornaments, the legality of which was the subject of this suit. With respect to the latter, they issued a monition for their removal and alteration. Mr. Beal complained that this monition had not been properly executed, but when he appeared before the Privy Council, it came out that he had ceased to be an inhabitant of the district of St. Barnabas. The learned commissary and myself were counsel against him, and so important did it appear to us, that the rule of practice as to showing an interest should be maintained, that for this purpose we formally made the objection, which we afterwards withdrew, that Mr. Beal had no interest to continue the suit, though he had lawfully begun it. Mr. Moore's report of the case is quite correct. It is as follows :—

“ The counsel for the respondents took an objection, which they did not press, to Beal being heard, as he had ceased to be a parishioner or inhabitant within the district of St. Barnabas, and therefore had no *locus standi* in an ecclesiastical court.

“ Their Lordships intimated their opinion, that the objection in general law and practice was correct, and that it was only in

the particular circumstances of the case, and having regard to the waiver of the objection by the Incumbent and Churchwardens, that Beal would be allowed to proceed, but that the permission granted him was not to be considered a precedent.”<sup>1</sup>

Here a party who had been qualified by his civil interest to begin the suit, became disqualified, by the loss of that interest, from continuing it. Here is no suggestion that the question must be raised by formal pleading, or by appearance under protest.

It would be difficult, I think, to conceive a stronger precedent in favour of the appellant's contention.

It should be mentioned that no official interest, so to speak, is set up in this case, indeed could not be, for the office of the Judge is not promoted, which we all know requires a criminal suit, and a proceeding by articles; and as one of the defendants is a clerk in Holy Orders, a proceeding must have been taken against him under the statute. Nor is it irrelevant to notice, that even if the ordinary were conducting his visitation, and was required to order the removal of an improper or illegal ornament in a church, such a requisition must be the subject of a presentment made to him by the churchwardens or sidesmen, who are necessarily parishioners, or by the incumbent.

I am of opinion that the monition in this suit, disclosing, as it did, no interest, but rather a want of interest, in the party proceeding, was bad upon the face of it.

I think that the party cited had a right to judgment upon that point in his favour, at the time when in obedience to the monition he appeared to show cause, even if he had not, as he had, received notice through the registrar, that no further delay would be allowed.

It has been suggested that the objection to the competence of the party proceeding ought to have been taken by formal pleading. But why? The fault was patent, and moreover could not have been remedied by pleading. The party proceeding was not entitled to take out the monition to commence a civil cause, as Dr. Hay says.

The interest required in this particular case is the status of a parishioner of St. Peter's, Folkestone, in the diocese of Canterbury, but the party proceeding has described himself as of No. 2, Broad Sanctuary, in the city of Westminster, and therefore in the diocese of London. He could not be allowed, without consent of the parties cited, to alter this designation, under which he began this suit, by further pleading. It being incumbent on him, in the first instance, in order to entitle him to take out a monition, to allege that he had an interest, he had

<sup>1</sup> 1 Moore, P. C. Rep. N.S., at p. 12.

not only failed to do so, but had in effect stated the contrary. The party cited had a right to be dismissed from this suit according to principles, and according to the precedents to which I have adverted.

I am very sorry to differ in opinion from the learned commissary of Canterbury, but, after a very careful examination of his learned judgment, I am compelled to do so.

I must reverse the sentence of the Court below, and dismiss the churchwardens from this suit with proper costs.

## BOYD AND OTHERS v. PHILLPOTTS.

- (1.) *The Court of Arches has jurisdiction to entertain an appeal from the decision of a Bishop acting as visitor of the Dean and Chapter of his cathedral.*
- (2.) *The Bishop has not, at a visitation of the Dean and Chapter of his cathedral, jurisdiction in invitato to order the removal of a reredos in the cathedral on the ground that it is unlawful.*
- (3.) *It is not necessary for a Dean and Chapter to obtain a faculty before making alterations or additions in their cathedral.*
- (4.) *A reredos having on it sculptured representations in bas-relief of historical scenes taken from the New Testament, and surmounted by a cross and figures of angels, is not unlawful.*

I GAVE two judgments in this case, the first on the 3d of July, and the second on the 6th of August 1874.

There was no appeal from the first judgment, which decided point (1.)

From the second judgment there was an appeal to the Privy Council, who reversed my judgment on point (2.), and affirmed it on points (3.) and (4.)

The case is reported in the Law Reports, in the Arches Court, 4 Admiralty and Ecclesiastical, p. 297, in the Privy Council, 6 Privy Council Appeals, p. 435.

FIRST JUDGMENT.—This is an appeal from a judgment of the Bishop of Exeter. It is admitted by the counsel for the respondent, that an appeal does lie to some jurisdiction from the judgment in this case. It is suggested first, that it lies to the Archbishop in person; secondly, that the Bishop's visita-



tion in this matter is of the same kind, and not to be distinguished in point of law from the general visitation of his diocese; that he is visitor as ordinary, and not by any special statute of the founder.

The objections which have been taken under protest, and supported by the able argument of Mr. Phillpotts,<sup>1</sup> against the jurisdiction of this Court, appear to be the following:—First, that this is a personal act of the Bishop, and to be distinguished from an act which would be done in his Consistory; secondly, that that being the case, the appeal lies to the Archbishop personally; and thirdly, that the Dean of Arches being only official principal, and not vicar-general, the appeal in a case of this kind, even though it would lie to a vicar-general, cannot be heard by an official principal. And here I may observe that there is a good deal of confusion arising from books which contain legal treatises on the jurisdiction of the Bishop in his Court. The word “Ordinary,” it is not sufficiently remembered perhaps, as used in the statute, applies either to the Bishop, acting personally, or to the Bishop acting through the medium of his own officers in his Consistory. It is very necessary to bear this in mind, because it clears up a great many apparently confused and contradictory opinions, which are to be found in the books on this subject. The truth is, when the ordinary is spoken of, he is spoken of either with relation to what he can do in his personal capacity of Bishop, or what he can do, according to law, through the medium of his chancellor. Therefore, I should be of opinion that the fact of an act having been done by the Bishop out of his Court, as it might be for instance, on his triennial visitation, would not debar the subject from the right of appeal to the Metropolitan, which he has, from all acts done by his Bishop; and I am of opinion also that to appeal to the Metropolitan means to appeal to the Metropolitan’s Court, unless indeed in the patent which is given to the Dean of Arches, who fills the office of official principal to the Archbishop of Canterbury, the powers which are to be exercised on the appeal are specially exempted. If, therefore, there be an appeal to some jurisdiction in this case, and if there be no distinction between an act done by the Bishop in his ordinary visitation of his diocese, and in his visitation of the cathedral, I should be of opinion, apart from all precedent, that on the general and well-established principle of ecclesiastical law, and common law, an appeal would lie from the Bishop of Exeter, as ordinary, in his visitation, to the Archbishop, or the Archbishop’s Court, unless, as I said before, there are some words

<sup>1</sup> The counsel for the respondent.

in the patent of the official principal of the Arches Court which exempt this jurisdiction from his authority.

Now the words of my patent, necessary to be referred to, are as follows :—I am to “ receive, in due form of law, all and every the appeals interposed or to be interposed to our Arches Court of Canterbury, and all and every the complaints by law and custom devolved or to be devolved to the said Court, and also to take cognisance of and, proceed in all and every such causes or businesses of Appeal and Complaint, and in all and singular the causes and businesses whatsoever, now depending undecided, or hereafter to be brought and examined in our said Court; and to do, exercise and administer plenary justice, according to the exigency of the law, and to the statutes of this kingdom of Great Britain, to all and singular the parties in the said suits, now or hereafter to be controverted; and also receive in due form of law, all and singular the appeals interposed or to be interposed from our Dean of the Arches, or his surrogate, deputy, or commissary.” That implies that the Dean of the Arches was in early days separated from the official principal. “ And from all others whomsoever, interposed to the audience of Us, and Our jurisdiction of our Church of Christ, Canterbury; and finally to determine the said causes of appeal according to law, and the custom of the said Arches Court, aunciently used.”

Now I should be of opinion that those words, taken in the true construction, give ample power to this Court to receive, on appeal, any case which might be brought before the Archbishop personally.

These observations I have made without any reference to precedents, but it is necessary, before the Court closes its observations, that some attention should be given to the precedents which have been cited. And those are of a twofold character,—precedents of appeal from the acts of the Bishop, as visitor, to the Court of Arches, and subsequently to the Court of Delegates; and precedents of appeal from the sentence of the Metropolitan to the Court of Delegates; both seeming to me to establish the same proposition, namely, that there is a regular course of appeal in matters like the present, through the usual stages of the ecclesiastical law; namely, from the ordinary to the Metropolitan, whether through his Court or personally, and from the Metropolitan to the Commissioners appointed by the Crown, or the Delegates, the duties of which are now discharged by the judicial committee of the Privy Council.

The precedents seem to be, perhaps with one exception, very much to the point. They all, I should observe, are to be found

in a valuable document, a return to an address of the House of Commons, dated the 5th of July 1865, by the present learned Registrar of the Appeals, who is also Registrar of the Court of Admiralty. It is a "Return of all Appeals in cases of doctrine or discipline made to the High Court of Delegates, from its erection by the 25th Hen. VIII. c. 19, A.D. 1533, until its abolition by the 2d and 3d William IV. c. 92, A.D. 1832, specifying—(1.) The date of the cause. (2.) The names and descriptions of the parties. (3.) The Court appealed from. (4.) The nature of the same. (5.) The names and descriptions of the delegates, or con-delegates, distinguishing whether appointed 'under the great seal or half seal.' (6.) The nature of the sentence, or whether the cause was otherwise settled or abandoned. (7.) The date of the sentence." And I have never heard it suggested that this document might not be safely relied upon without reading the voluminous documents from which the legal conclusion is drawn.

The first case, most material to notice, is numbered 15, and that took place in the years 1610 and 1611; it was between a clerk of the name of Robert Withers, of the diocese of Exeter, who appealed against certain Canons residentiary, and against the Bishop of Exeter. The case was this: Withers was deprived of his office of vicar choral. There was an appeal to the Arches, and an appeal to the Delegates, and no question was raised as to that being the regular course of proceeding, or as to the jurisdiction of the Court of Arches.

The next one, I think, was numbered 69, and was one which has been a great deal discussed, both on this and on a former occasion. The case of *Philip Havers, Clerk, v. The Bishop of London*, was in 1678 and 1679. It was a case of criminal correction of a Clerk for having procured another person to be ordained for him; for having, in fact, consented to the forgery of his name in the letters of Institution; and was an appeal from the Court held by the Bishop of London, during his triennial visitation at Colchester. There was a decree of the Court of Arches, it was affirmed, and went to the Delegates; and with those Delegates sat not less than one Justice of the King's Bench, one Justice of the Common Pleas, a Baron of the Exchequer, with five civilians and three Bishops, a very full Court of Delegates indeed: and they affirmed the decree of the Court of Arches, retained the cause, with the consent of the respondent, and condemned Havers in costs.

I am unable to follow the argument of the learned counsel for the respondent, by which he has sought to impair the stringency of these precedents, because it is well known to us,—to those who have practised in the Ecclesiastical Courts,—

that it was competent for the Superior Court, if it pleased, to admit fresh evidence, though that was rarely done, and not done without strong cause for such necessity being shown.

In this case, what appears to have happened was that the Bishop ordered the Clerk to do a certain act, namely, to write a form of subscription, in order that he might compare it with the alleged forgery before him. The Clerk refused to do so, and he was suspended, I presume either because the Bishop thought that that was sufficient proof of his having committed the forgery, or for contempt of the Order of the Court, it does not appear which. The appeal was by the Clerk, and the Court of Arches took evidence as to the entries in the book of subscriptions; that is to say, it thought itself warranted, in the peculiar circumstances of that very remarkable case, to do that which it rarely does, namely, to admit fresh evidence, and the result was that it considered the offence proved, and Havers was sentenced to salutary penance, which sentence was affirmed by the Delegates.

No. 102 was an appeal in the year 1696, in which the vicar of the parish appealed. It was concerning the case of a correction of a Clerk for immorality, and was appealed from the Consistory of Hereford; and this case is perhaps open to a remark made by Mr. Phillpotts, that that appeal would be in the ordinary course, and could hardly be considered a precedent for the present suit; and I am inclined to think that objection is well founded.

Then there is another precedent, I think; it is not necessary to go into them all. There is one, No. 160, which is one of a more recent date—as late as 1740—in which the Rev. Dr. Wynn, one of the Canons residentiary of the Cathedral Church of Salisbury, appealed. The complaint was against the Canon residentiary, and the case was a very remarkable one. It was “A business of complaint against a Canon residentiary for alleged violation of cathedral statutes in dealing with the capitular revenues.” That was also an appeal from a Consistorial Court, namely, that of Salisbury, and was an appeal that went up to the Arches, and then up to the Delegates. That case seems rather to illustrate what I said in the beginning of my remarks, that the Bishop sitting in his Court and the Bishop sitting personally must be considered, so far as the question of appeal is concerned, as the same. This case No. 160 also, as I have mentioned, went up to Delegates.

There are one or two more that were mentioned to me, 134, I think, and 135, but they all go to the same point, namely, to show that in cases of this description there has been an appeal to the Court of Arches.

The precedent that was most relied upon, as counterbalancing these rather strong authorities, was the case of Goodman, which is not unfamiliar to me, because I remember it was a cause which, many years ago, I had the honour of quoting in argument before the Court of Queen's Bench, in a case of prohibition, concerning the canonical punishment of the Dean of York.<sup>1</sup> The case of Goodman was one that was chiefly relied upon, and though it was very much pressed in the argument, in the learned and elaborate judgment which was afterwards delivered, in granting the prohibition, no reference whatever was made to it, and it was well understood by the profession that the Court of Queen's Bench were of opinion that it was not a case so reported as to enable the Court to take any cognisance of it at all, and for that reason, I suppose, no notice was taken of it, in the very carefully drawn judgment, in which every other case that bore upon the subject was referred to.

I am of opinion that both on principle, and on precedent, as well as on the words of my Patent, I must overrule this protest, pronounce for the jurisdiction of the Court, and assign Mr. Phillpotts' client to appear absolutely in this case.

SECOND JUDGMENT.—I. This is a case of considerable importance. It has been argued with much ability and learning before me, and I gladly take this opportunity of thanking the counsel on both sides for the assistance which their industry and talent have rendered to the Court.

This is an appeal from a judgment of the Lord Bishop of Exeter as "Visitor and Ordinary" of the cathedral church of Exeter. At the petition of the Venerable William John Phillpotts, chancellor of the diocese, archdeacon of Cornwall, and prebendary of the cathedral, the Bishop held "an episcopal visitation" of his cathedral and of the Dean and Chapter thereof. The object of the petitioner was to obtain the removal of a structure recently erected in the cathedral called a "reredos."

The articles on this subject preferred by the visitor and the answers of the Dean and Chapter were as follows:—

Art. 1. "Is there a reredos in the choir of our said cathedral church? If there is a reredos in the said choir, when was such reredos erected?"—(1.) "There is a reredos in the choir of the said cathedral church. Such reredos was begun to be erected on 23d January 1873, and is not yet completed."

<sup>1</sup> In the matter of the Dean of York, 2 Q. B. 1.

Art. 2. "Are there any images on such reredos? What is the nature or description of such images? When were such images erected or placed there?"—(2.) "There are on such reredos sculptured representations in bas-relief of the three following historical scenes, that is to say:—The Ascension of our Blessed Lord, the Transfiguration of our Blessed Lord, and the Descent of the Holy Ghost on the Day of Pentecost. There is an angel at each side of the reredos, and two other angels, one on each side of the cross which surmounts the reredos. All these articles were cut or carved out of the actual structure during the progress of the reredos."

Art. 3. "Was the said reredos erected in the choir of our said cathedral church under any legal authority?"—(3.) "Yes."

Art. 4. "Were the images on the said reredos erected or placed there under any legal authority?"—(4.) "The reredos as described above was placed under legal authority."

Art. 5. "Is the retention of the images on the said reredos sanctioned by the laws ecclesiastical?"—(5.) "The retention of the reredos in its present unfinished state and when completed is sanctioned by the laws ecclesiastical."

The last appears to me a rather singular question from a visitor.

The Bishop ordered this structure to be removed, and "either a stone screen without images thereon to be erected, or an open ironwork lately erected and now standing on each side of the reredos to be continued so as to occupy its place," and the Ten Commandments to be set up at the east end of the choir of the cathedral.

From this judgment the Dean and Canons appealed to this Court; the respondent appeared at first under protest and denied the jurisdiction of this Court. The Court, after hearing counsel on both sides, pronounced against the protest, and assigned the respondent to appear absolutely. In that sentence the respondent has acquiesced. Nevertheless, as much confusion and doubt appears to have prevailed in the present and other instances of episcopal visitation of a cathedral, both as to the nature, authority, and legal incidents of such a visitation and as to the right of appeal from the acts of the ordinary as visitor, I think it expedient to make a few preliminary remarks on both subjects.

It is legally competent to the Bishop to visit his cathedral, either at the triennial visitation of his diocese or at a special visitation of the cathedral.

It is the latter kind of visitation which, as I collect from the circumstances of this case, the Bishop has exercised in the present instance.

His authority has been invoked and put in use as visitor of the cathedral alone, but nevertheless it is the ordinary episcopal authority with which he is clothed on these occasions, and not the special authority which belongs only to the visitor of a college or private foundation.

A certain test by which the two jurisdictions, that of the visitor of a college and of a cathedral, may be distinguished is the liability to an appeal. In the former case there is no appeal, in the latter there is (*The Bishop of St. David's v. Lucy*, *Ld. Raymond's Rep.* p. 447, *Philips v. Burry*, 2 T. R., 346, 353).

Many instances are to be found of appeals, according to the usual course of ecclesiastical law, from the acts of the ordinary as visitor of a cathedral.

Thus in 1716, in the case of *Leneve Boughton*, an appeal from the Dean and Chapter of York was prosecuted to the Archbishop as visitor of the cathedral, and from his sentence to the Delegates (page 66 of Printed Return for the House of Commons of Appeals to the Delegates, 5th July 1865, No. 134), so an appeal from the sentence of the Archbishop of Dublin as visitor against a prebendary in 1718-19 was prosecuted to the Delegates (*ib.* 66, No. 135, *Harrison v. Archbishop of Dublin*); so in the case of *Philip Havers* (clerk) *v. Bishop of London* (*ib.* 30, No. 69), in 1679, there was an appeal from an act of the Bishop on his triennial visitation to the Court of Arches and the Delegates. In 1740, in the case of *Wynn v. Sager and Others*, on the charge of alleged violation of the statutes of the cathedral of Salisbury, which was heard before the Bishop of Salisbury, there was an appeal to the Arches and to the Delegates (*ib.* 78, No. 160).

I am of opinion, therefore, that the appeal has been rightly brought to this Court.

The Bishop conducted this visitation under the advice and assistance of Sir Henry Singer Keating, one of the Judges of the Court of Common Pleas, and in accordance with two opinions of that learned assessor pronounced, in the first instance, that he had jurisdiction as visitor over the fabric of the cathedral; and in the second instance that the reredos was illegal.

*First*, because it was erected without a faculty granted by the Bishop.

*Secondly*, because it contained images which were illegal and contrary to the laws ecclesiastical of this realm.

The question as to the jurisdiction of the Bishop over the fabric and the question as to the necessity of a faculty are so interwoven that I think they must be considered together.

The appellants, as I understand their argument, do not dispute a power of the Bishop to visit, but they contend that this

power is limited both by the general law which governs the relations of a Bishop to the cathedral and by the special privilege of the Dean and Canons of Exeter. I will say a word or two upon the latter question first.

The learned assessor says (p. 64) “ . . . it seems to me that the right of the Bishop to visit this cathedral, with all those rights that belong to an ordinary episcopal visitation, exists at the present time.” The words “ordinary episcopal visitation” would properly denote the triennial visitation of the Bishop, which does indeed usually commence with the visitation of the cathedral.

But this does not appear to be the character of this visitation, which was an extraordinary and special visitation, holden at the application of a particular person to remedy a particular grievance.

This is proved by the citation to the Dean and Chapter, which is in the following words:—

“Whereas the Venerable William John Phillpotts, prebendary of our said cathedral church and archdeacon of Cornwall, in our diocese of Exeter, hath presented to us a petition, dated the 9th day of June 1873, praying us to exercise our power as visitor of our said cathedral of Exeter to visit the Dean and Chapter of our cathedral of Exeter aforesaid, and to inquire into the recent erection of a reredos in the choir of our said cathedral church, with certain images thereon, not being on any tomb, or in any painted window, such erection having been made, as alleged by the petitioner, without our consent, and the images aforesaid so placed being in themselves contrary to the laws ecclesiastical of this realm, as the petitioner, when called upon, alleges he is ready to prove; and further praying that, on such proofs being made clear to our satisfaction, we would order the removal of the images aforesaid, and the substitution of the Ten Commandments in their stead.”

I may here observe that the other episcopal visitations of the cathedral referred to in the process seem to have been during the triennial visitation. Such is my inference, at least, from the words (p. 37 of process), “primary visitation.” And in the Dean of York’s case (referred to, p. 46 of process), the visitation, though not part of the triennial visitation, was not confined to a special purpose, like the present, but was a visitation of the whole cathedral.

The case of *Parham v. Templar* (3 Phillimore, Rep. p. 223) has been much relied upon, and it is a case of very great importance. The Dean and Chapter had at that time a Peculiar, in which they granted probates of testaments. Their Peculiar Court decided a case relating to a pew in the nave of the



church of Ashburton, and the question to be decided by that most learned ecclesiastical Judge, Sir John Nicholl, was whether the appeal lay to the Consistory Court of Exeter or to the Court of Arches. Sir John Nicholl, in a very careful and elaborate judgment, ruled that the appeal lay to the Arches.

" . . . I am not aware," he said, " that one instance is to be found in which an appeal has been brought from Deans and Chapters to the Bishop, and afterwards from the Bishop to the Archbishop. The conclusion which I draw from this view of the subject is this, that as by the general rule of law, a Peculiar is not subject to the ordinary authority of the diocese; so the appeal does not lie from the Peculiar, and more especially the Peculiar of a Dean and Chapter, to the diocesan, but to the Metropolitan. The Peculiar in question is that of the Dean and Chapter of Exeter, which is clearly of the species I have just taken a view of;—namely, exclusive of the Bishop in the hearing of causes, and exempt from the Bishop in point of visitation."—(Pp. 250, 251.)

Again he says: " The general result of this is that a Peculiar is not subordinate to, but co-ordinate with, the jurisdiction of a bishop."—(P. 248.)

And again: " Now upon these authorities, the practice, the propriety, and the reason of the thing lead to the same conclusion; and if the Bishop have no concurrence whatever in the hearing of causes, and if the Bishop have no right of visitation, he seems to be in no one particular the ordinary of the place; but the Peculiar is *quoad hoc* co-ordinate with the Bishop, and the only appeal is to the Metropolitan. There may, indeed, have been specially and originally reserved to the Bishop some particular acts; such as the granting probate to the will of persons of higher degree, and the granting of licenses; and certainly, as far as these exceptions go, the Peculiar does not exclude the Bishop. But if the Peculiar has the hearing of causes as well 'ad instantiam partis' as 'ex officio,' and is exempted from visitation, it should seem, in common propriety, that his superior is not the Bishop, but the Metropolitan."—(P. 249.)

The appellants accordingly contend, not that the cathedral is *ex lex*, but subject to the jurisdiction of the Archbishop of the province.

Now certainly, after such a judgment as this, the burden of showing that the privilege of exemption claimed by the Dean and Chapter has ceased, lies upon the petitioner in the Court below, the respondent here.

He seeks to discharge it principally by the allegations that the Peculiar has been destroyed by an Order in Council, and

that the Dean and Chapter have admitted as much in answer to questions issued by the Cathedral Commission.

The Order in Council declares all Peculiar and exempt jurisdictions within the diocese of Exeter abolished, "except that the cathedral church of Exeter shall remain and be subject to the same jurisdiction and visitation to which the same is now by law subject, and to none other."—(Order in Council gazetted 22d February 1848.)<sup>1</sup>

The Cathedral Commission in 1852 contained a variety of questions to Deans and Chapters, the 9th of which was "as to the relations" between the Chapter and the Bishop of the diocese, and asks whether they are defined by any statute, charter, or composition.—(P. 51 of Process.)

The answer of the Dean and Chapter of Exeter was :—"The relation of the Bishop to the Chapter is that of visitor. The rights of the Bishop in the cathedral are those of Bishop of the see. The Chapter are not aware of any definition of such relation by royal charter, by the statutes, or any composition. The present Bishop holds with the bishopric the dignity and office of treasurer, and a place of canonry. As such he holds the separate endowment of the dignity, and takes his share as canon of the common fund. The Bishop has no other payment from the Chapter."—(P. 51 of Process.)<sup>2</sup>

The learned assessor was much impressed by this answer, inasmuch as it contained no limitation of the Bishop's power as visitor, and it appears to have been mainly, if not exclusively upon this ground, that he advised the Bishop to proceed with the visitation.

I confess that this seems to me rather a large conclusion to draw from slender premises. If the privileges contended for did exist in fact and in law at the time of the answer, it seems to me difficult to say that an inaccurate or meagre statement in the answer could destroy them, while the language of the Order in Council, which is in effect a statute, appears carefully to preserve them.

I think the point is one of considerable difficulty, while the great respect which I feel for the opinion of the learned assessor, who felt no doubt about it, makes me very anxious to avoid, if I can do so with justice to the suitors, arriving at a decision not in accordance with his.

Now inasmuch as the appellants do admit a power of visitation in the Bishop, and as the whole of their argument against the particular exercise of it in the present case is sub-

<sup>1</sup> *Ecclesiastical Commissioners, Orders in Council*, vol. vi. pp. 135, 138.

<sup>2</sup> *Cathedral Commission, 1st report, Appendix, Answers from Chapters*, p. 193.

stantially founded upon the general relations subsisting between all deans and chapters and their bishops, rather than upon the peculiar relation alleged to subsist between the Dean and Chapter of Exeter and their Bishop, I think I may proceed to decide this case with respect to the former alone.

But I wish to make here a preliminary observation which appears to me not unimportant in its bearing upon every part of this case.

The special episcopal visitation which the Bishop has made in this case was not for the purpose of enforcing old nor of making new statutes—I am not adjudicating upon his power in this matter. This visitation has for its object the enforcing the general ecclesiastical law, whatever that may be, with respect to the fabric of the cathedral. But the general ecclesiastical law, whether it relate to inanimate things like the building and ornaments, or to the persons of the cathedral officers, must be enforced by that Court which properly has jurisdiction over the subject-matter, and can execute its decrees; the members of the cathedral body are certainly visitable by the bishop, and all offences committed by them against the ecclesiastical law, whether doctrinal or moral, are no doubt in a sense corrigible by him; but not since the Dean of York's case, summarily, and at the time of visitation, as fellows of a college are corrigible by their visitor, but by subsequent process in a regular Court. So an offence against the common law, such as stealing the Holy Communion plate, may be inquired into and detected at the Bishop's visitation; but the real punishment of the offender would be effected through the agency of the ordinary criminal court.

I asked during the course of the argument how it was proposed to enforce the order of the Bishop in this case, but I received no answer.

The Bishop, under the advice of his learned assessor, founded, as I have said, his judgment against the Dean and Canons partly upon the grounds that the reredos had been put up without a faculty.

The proposition of ecclesiastical law involved in this part of the sentence has very greatly surprised me. After an experience of no ordinary length with the subject of faculties, which, as chancellor of various dioceses before I occupied my present position, I have often been compelled to consider in all its bearings, I could not recollect a single instance in which a Dean and Chapter had asked for or obtained a faculty from the bishop for alterations in their cathedral. It has been admitted that after a careful search no record can be found of such a faculty having ever been issued for the cathedral of Exeter, the interior

of which not only appears to have often undergone alterations, but which actually contained a reredos with paintings on it (for which the present reredos was substituted), put up in 1823 without a faculty.

It would not have surprised me to learn that in some cathedrals which included within their walls—as Chichester and Carlisle cathedral did formerly, and as I believe Bangor cathedral does still—a parochial church, a faculty had been obtained from the Consistorial Court for alterations in such a parochial church, and upon inquiring I find that in 1813 a faculty so specially limited was granted in the diocese of Carlisle. The faculty recites that a certain part of the cathedral had been, by permission of the Dean and Chapter, used as a parochial church, that the Dean and Chapter had applied for a faculty to erect a gallery and seats in that peculiar part, and such faculty was granted in and issued from the Consistorial Court. The parish church itself was afterwards removed from the cathedral without a faculty. This particular, and I believe solitary, exception seems to strengthen the general rule to the contrary. When the nature of the instrument called a faculty is duly considered, the reason why the obligation of obtaining one for alterations in a cathedral has never yet been imposed upon a dean and chapter is pretty evident.

A faculty is, properly speaking, a license issued by the ordinary through his Consistorial Court—formerly some Peculiar as well as all Consistorial Courts had this jurisdiction—to effect certain alterations of a grave character in a parish church. The issue of this instrument is preceded by a citation affixed to the church door, calling upon all parishioners to show cause, if they desire to do so, against the grant of the faculty upon a certain day in the Court; if they do appear a suit begins, and is prosecuted in the usual manner. In many cases the discretion of the ordinary alone is invoked, and the legality or illegality of what is proposed to be done is not mooted. Now if there are no parishioners to cite in the case of a cathedral—for it is not to be supposed that the maxim that the cathedral is the parish church of the diocese would entitle all the inhabitants of the diocese to be cited—it could not be seriously maintained, *e.g.* that the Dean and Chapter of St. Paul's must obtain a faculty from the Bishop's consistory to render legal the embellishments now in process of being effected in their cathedral, in which case all the parishioners of London (and indeed the whole diocese) would have a right to be cited before the faculty issued.

Nor can any consequence of importance be drawn from the fact that generally the close, that is the *claustrum* or immediate

precincts of the cathedral, is considered as a sort of parish for the purpose of publications of banns of marriage and other matters; neither of these circumstances interfere with the legal position that the primary discretion at least, if not the ultimate discretion in all that relates to the ornaments and structure of their own cathedral, is vested in the dean and chapter. The fact was admitted, and indeed could not be denied, that in the cathedrals of St. Paul's, Worcester, Salisbury, Chichester, Chester, and Llandaff, very material, extensive, and substantial alterations had been effected without a faculty; other cathedrals might, I think, be added to the list.

The Queen's Bench said in the Dean of York's case (2 Q. B. 38): "the law can only be proved by practice and precedent. Both are wanting here;" and so are both wanting in this matter of a cathedral faculty, and against this universal negative of practice and precedent is not to be set the *obiter dictum* of even so great a judge as Lord Stowell, that an ordinary might compel the erection of an organ in a cathedral, even if that *dictum* supported, as in truth it is very far from doing, the position that an episcopal faculty was necessary whenever an important alteration was made in a cathedral.

And here this remark occurs to me. The Peculiar Courts of deans and chapters, exempt as that of Exeter certainly once was from the jurisdiction of the bishop, exercised to a great extent the functions of the ordinary, and not only adjudicated upon questions of testaments and marriages (to say nothing of their criminal jurisdiction), but also as a matter of course upon questions of faculties. A well-known instance is the case of the painted window of Saint Margaret's, Westminster, in the Commissary's Court of the Dean and Chapter of Westminster (1758-60).

I have not been able to discover any single instance in which a dean and chapter caused a faculty to issue from their own Court for alterations in their own cathedral. The reason appears to me obvious; they were the only persons legally interested, and what was done was necessarily done by their authority. A faculty, therefore, was not required, and in no one instance obtained.

It must be remembered, with reference to this as well as other relations of the dean and chapter to the bishop, that they are properly speaking his council; that they are, as Bishop Stillingfleet says, *episcopi confratres, consilarii assessores, membra episcopatus*. "The dean and chapter" (Lord Coke says) "were appointed as a council to the bishop, with whom he is to consult in all cases of difficulty, to which purpose every bishop *habet cathedram*, and who are to consent to every grant, etc.," and he

adds, "although they should depart with their possessions, yet for necessity the corporation doth remain, as well to assist the bishop in his calling as to give their assent."—(*Phillim. Ecc. Law*, p. 148, 3 Rep. 75.) The bishop indeed has his throne in the cathedral, and has a right to preach in it, but it is manifest that the relations of the dean and chapter to the Ordinary are very different from those of the clergy generally. The dean and chapter have privileges which parochial incumbents and curates have not, both with respect to the services in their cathedrals, the fabric itself, and various other matters; and, as has been shown, their consent is required in order to confer validity on certain acts of the bishop.

This observation may tend to explain in some degree the difficulty which would arise as to the enforcement of the injunctions of the bishop, as visitor, when he acts personally as visitor, or otherwise than through his Court.

The inquiries and subsequent injunctions of the ordinary or visitor, to be found in the books and in the records of this and of other cathedrals, were often, it is to be hoped, and should always have been, the result of previous council taken with the dean and chapter, and generally, though certainly not always, obeyed.

In the Appendix to the Report of the Cathedral Commissioners (1854), I find the following confirmation of my opinion with respect to the present case, "The statutes," it is there said, "which govern the church of Exeter were enacted from time to time, *pro re nata*. They were framed in the form of injunctions from the bishop, as visitor, requiring the more accurate observance of existing ordinances or of new statutes, either suggested by the chapter to the visitor or framed by him at their request and with their concurrence, and finally accepted by the body. No instrument has ever been allowed to be of any force unless ratified by the bishop and chapter, and authenticated by the seals of both."<sup>1</sup> (Appendix to Report of Cathedral Commissioners, 1854, p. 183; "Exeter Cathedral," Constitution of the Chapter.)

In one of the latest visitations of the dean and chapter (p. 50 of Process) there is an entry in the Acts of the dean and chapter (Dec. 22, 1731), from which it appears that at a chapter at which the dean and all the canons were present it was

<sup>1</sup> "The Bishop, with the advice of the Dean and Chapter, enacts rules for the government of the cathedral church. Lichfield, Dugdale iii. 239-256. Ed. 1673, viii. 1240-1265, Ed. 1830. Wells, Wilkins, *Concilia magnæ Britannicæ et Hibernicæ* (London, 1737), i. 683. Salisbury, Wilkins, *ibid.* 715. St. Paul's, *Strype's Life of Grindal*, b. 1, c. 6, b. 2, c. 2. York, *Grindal's Remains* (Parker Society's Ed.), pp. 145, 153."

ordered that a memorandum should be made in the statute-book to the effect that certain "pretended statutes," as they are described, entered in the name of Bishop Wootton, were never confirmed by the dean and chapter, and are therefore to be considered as "*invalida et irrita*."

Now from the year 1709 down to the death of the late distinguished bishop, the Bishop of Exeter was always a canon, and it appears that the then bishop of the diocese himself was present and an assenting party to the order which declared these statutes of Bishop Wootton to be null and void.

A careful consideration of the whole of this question, with reference both to principle and to practice, leads me to a clear conclusion that the absence of an episcopal faculty does not render the erection of this reredos illegal.

Now the answer to the twin question (if I may so express myself), viz., as to the power of the bishop to order the removal of the reredos without the consent of the dean and chapter, seems in great measure to be anticipated by the decision upon the question of the faculty.

I am of opinion that the bishop acting alone had not the power to order the removal of the structure any more than he had the power, acting alone, to prevent its being put up. But inasmuch as I may be wrong, and as I think the parties have a right to the judgment of this Court upon the most important part of this case, namely, the legality of the structure itself, I will not shrink from the labour and responsibility of giving my judgment on this point also.

## II.

I will assume, therefore, that the Bishop had jurisdiction over the fabric of the cathedral, and had power to order the removal of an illegal structure therein, and I proceed to consider whether the sentence of his Lordship pronouncing the reredos to be illegal was or was not well founded in law.

And first, what kind of structure is a reredos in the general and usual sense of the term?

A reredos is, I learn from *The Glossary of Architecture*, published in 1840, a sort of screen at the back of the altar, called also lardos, l'arrière-dos. The same authority informs me that "The reredos at the back of the side altars frequently remains in our cathedrals, and also in country churches, when the altar itself is destroyed. Sometimes the figures in the niches of the reredos remain perfect, or nearly so, as at Hanwell, near Banbury, Oxon. More frequently the niches are empty, as at St. Michael's, Oxford (Plate 67). At Enstone, Oxon, a plain stone

altar with its reredos still remains.”—(*Glossary of Architecture*, Part I. p. 174, Parker.)

Since the date of this publication thirty-four years ago, reredoses have been restored in many of our cathedrals.

The objection against the reredos *per se* without figures seems to be that it was put up without a faculty, for the former stone screen was in effect the reredos without figures. It was a solid screen in compartments, with Gothic ornaments extending across the whole east end of the choir. The removal of this screen is declared by the bishop to have been illegal. But the present reredos with the figures is ordered to be removed. The substantial question is, whether the particular figures rendered this stone screen reredos illegal?

The next inquiry is, what is the character of this particular reredos?

The answer of the dean and chapter is, “There are on such reredos sculptured representations in bas-relief of the three following historical scenes; that is to say, the Ascension of our Blessed Lord, the Transfiguration of our Blessed Lord, and the Descent of the Holy Ghost on the Day of Pentecost: there is an angel at each side of the reredos, and two other angels, one on each side of the cross which surmounts the reredos. All these articles were cut or carved out of the actual structure during the progress of the reredos.”

Surely, apart from all legal considerations, it would be difficult to conceive a series of representations more likely to edify and instruct the spectators in Christianity, and less obnoxious to the charge of superstition than those which have been just described. Nevertheless, if such representations be prohibited by the law of the English Church, that law must be enforced by this Court.

In Mr. Phillpotts’s<sup>1</sup> argument, images have been objected to on various grounds; the principal were, I think, the following:—

1. That they were contrary to the usage and practice of the pure and primitive Church:
2. That they were objects of especial censure by those who conducted the Reformation in England:
3. That they were ordered to be moved out of churches by various authorities having the force of law:
4. That there is a specific statute which renders them illegal:
5. That if it is a matter of discretion whether they shall be allowed to remain or not, that discretion ought to be exercised in favour of this removal, inasmuch as they tend to idolatry, forbidden by the Second

<sup>1</sup> The counsel for the respondent.



Commandment, and to superstitions favoured by the Church of Rome and rejected by the Church of England.

There was another objection which I mention, a little perhaps out of its place, because I think it may be disposed of at once. It is the objection that the Ten Commandments have been displaced to make room for this reredos. The answer of the Dean and Chapter is that they intend to comply with the injunctions of the canon in this case by placing the Commandments on the east wall where they can be seen by the people; and Sir Henry Keating observes with perfect accuracy, "As, however, the Judicial Committee in the case of *Westerton v. Beal* held that the requirements of the law can be fulfilled in some cases without placing the Commandments over the table, provided they are so placed as to be read by the people, it must, I think, be taken to be the intention of the Dean and Canons so to place the Commandments as to be a compliance with the law."—(P. 166 of Process.)

It is true that, nevertheless, the Bishop has made an order upon this subject also; but I entirely agree with Sir Henry Keating both in his statement of the law and in his opinion, that it is to be presumed in this case that the Dean and Chapter intend to obey it. I pass by, therefore, this objection.

With respect to the other objections, I hope I have correctly stated, as I have endeavoured to do, the heads under which Mr. Phillpotts arranged his able argument, and I propose to deal with them in succession, and pretty much in the same order.

An anxious care to avoid the idolatry of the Jews and the Gentiles was no doubt the reason why, in the earliest Christian history, the Acts of the Apostles, we find St. Stephen applying the words of the prophet Amos to the Israelites, and rebuking them "for the figures which ye made to worship them," "*τοὺς τύπους οὓς ἐποιήσατε προσκυνεῖν αὐτοῖς.*"—(Acts of the Apostles, vii. 43.)

During the first three centuries, images in churches were very rare, if they existed at all. Fleury, indeed, states, upon the authority of Tertullian, that there were images in some churches, and upon the vessels used in divine worship (*Histoire Ecclesiastique*, tom. 2, l. v. p. 54). The warning of St. John (1 Ep. v. 21) against idols related to the sacrifices offered by the heathen to their idols, from which Christians were admonished to abstain. But the New Testament being silent on the subject of images generally, the moral text of the Second Commandment appears to have been considered binding upon Christians. And Tertullian, in his answer to the Marcionites, observes that the Jews were not prohibited from having images unless they wor-

shipped them, and that therefore there was no contradiction between the Second Commandment and the cherubim ordained for the ark, or the brazen serpent (Fleury, *ibid.*) The words of Tertullian are: "Sic et cherubin et seraphin aurea in arcae figuratum exemplum certe simplex ornamentum, accommodata suggestui, longe diversas habendo causas ab idolatriæ conditione, ob quam similitudo prohibetur, non videntur similitudinum prohibitarum legi refragari, non in eo similitudinis statu deprehensa ob quem similitudo prohibetur."—(*Tertull. Opera, Adversus Marcion*, lib. ii. cap. 22.)

As the authority of the Second Commandment was a part of the argument addressed to me against the use of graven images in a church, it is not irrelevant to advert to the opinion of Bishop Taylor upon this point. Referring to the prohibition in the Second Commandment, he does not mention the two cherubim of gold in the ark, stretching forth their wings on high and their faces looking one to another, and toward the mercy seat (Exodus xxv. 20), or "the molten sea, and under it the similitude of the twelve oxen which did compass it about," or "the two cherubim of image work overlaid with gold"<sup>1</sup> (2 Chron. iii. 10, iv. 2, 3); but he observes:—"But when we consider further, that Solomon caused golden lions to be made about his throne, and the Jews imprinted images on their money, and in Christ's time they used the images of Cæsar on their coin, and found no reprovcr for so doing, this shows that there was something in the Commandment that was not moral; I mean the prohibition of making or having any images. For to these things we find no command of God, no dispensation, no allowance positive; but the immunity of reason, and the indemnity of not being reprovcd: and therefore, for so much as concerns the making or having pictures and images, we are at liberty, without the warranty of an express commandment from God" (*Rule of Conscience*, Rule vi., *Bishop Taylor's Works*, vol. xii., Heber's ed. p. 397).

Some of the Fathers of the primitive church condemned the arts of painting and sculpture as in themselves wicked, and declared, as Jeremy Taylor says, that "God forbade the very trade in itself" (p. 395). But he adds, "Now if this sense was also in the commandment, it is certain that this was but temporary; and therefore could change:" and he cites the instances of God's assisting Bezaleel and Aholiab (p. 396).

"I conclude" (he says) "that the Second Commandment is a moral and natural precept in the whole body and consti-

<sup>1</sup> "Videatur fuisse humana specie instar juvenum alatorum ut angeli apud nos pingi solent ad representandum eorum pereunitatem, vivacitatem, vigorem, celeritatem."—*Cornel. Janseni Episcopi Iprensis Pentateuchus*, p. 315.

tution of it, if the first words of it be relative to the last; that is, if the prohibition of making images be understood so as to include an order to their worship: but if these words be made to be a distinct period, then that period was only obligatory to the Jews, and to Christians in equal danger, and under the same reason; and therefore can also pass away with the reason, which was but temporary, transient, and accidental; all the rest retaining their prime, natural, and essential obligation." (*Bp. Taylor's Works*, vol. xii., Heber's ed., p. 412, "Of the Christian Law," § 42.)

The use of images, however, increased as the church increased, though the Council of Eliberis (A.D. 305), by its 36th canon, said, "Placuit picturas in ecclesia esse non debere, ne quod colitur et adoratur in parietibus depingatur." It will be observed that this canon is against painted pictures.

But the struggle against the natural course of events was vain. It was apparent that there was a language to be addressed to the eye as well as the ear, that men might be taught by form and colour as well as by sound, and that many incapable of the latter were capable of the former kind of education.

Gregory the Great wrote to Serenus, Bishop of Marseilles, who had broken images in churches, a letter full of good sense:<sup>1</sup>—" . . . Perlatum siquidem " (he says), " ad nos fuerat, quod inconsiderato zelo succensus, sanctorum imagines sub hac quasi excusatione, ne adorari debuissent, confregeris. Et quidem quia eas adorari vetuisses omnino laudavimus, fregisse vero reprehendimus. Dic, frater a quo factum sacerdote aliquando auditum est quod fecisti? . . . Aliud est enim picturam adorare, aliud per picturæ historiam quid sit adorandum addiscere. Nam quod legentibus scriptura, hoc idiotis præstat pictura cernentibus, quia in ipsa etiam ignorantes vident quod sequi debeant, in ipsa legunt qui liberas nesciunt unde et præcipue gentibus pro lectione pictura est . . . Frangi ergo non debuit, quod non adorandum in ecclesiis, sed ad instruendas solummodo mentes fuit nescientium collocatum."

The distinction here taken between the use and abuse of images was one never entirely lost sight of by our Church, though during one period much obscured.

We pass on to the eighth century, which the learned Cave calls "sæculum iconoclasticum." He says, "Totum pene sæculum exercet famosa de cultu imaginum controversia."<sup>2</sup>

<sup>1</sup> *S. Gregorius Opera omnia*, "Epistolarum ex Registro," lib. ix., Indictione iv., Epist. ix. (p. 438 g., ed. 1533, Paris.)

<sup>2</sup> Cave, *Scriptorum Ecclesiasticorum Historia Literaria*, vol. i., p. 611 (ed. 1741).

All persons acquainted with the history of this period are aware that the Greek Emperor Philip and John the Patriarch ejected images from the Church of Sta. Sophia by an edict in 713, the Roman Pope stoutly protesting against the act; that the Emperor Leo, called the Isaurian, passed a law in 706 against images in churches, and was excommunicated by the Pope; that the Emperor Constantine Copronymus convened the Council at Constantinople, called the Seventh, which in 741 decreed that images (*προσκυνήσεως causa*) for purposes of worship, were unlawful, both in churches and private houses—a curious sort of prototype of the statute of Edward VI.

Dean Milman remarks that “The cold naked walls, from whence the scriptural histories had been effaced, the despoiled shrines, the mutilated images, could not compel the mind to a more pure and immaterial conception of God and the Saviour.”—(*Hist. of Latin Christianity*, ii. 146.)

The Empress Irene, with her son Constantine, a minor, convened the Second Council of Nicæa in 776, which declared null the Seventh Council of Constantinople; each party raged furiously against the other; the reciprocal charges of idolatry and denouncers of Christ began to be freely made,<sup>1</sup> and their influence has not yet expired.

This Council ordered certain images to be set up in all churches and houses to be worshipped, lit up with tapers, and to receive other marks of worship (*προσκυνήσεως*).

“The worship of images,” Mr. Robertson observes (*Hist. of Christian Church*, vol. ii. p. 261, ed. 1856), “although only in the form of painting, not of sculpture, has ever since been retained by the Greeks.”

Charlemagne, who was as determined as any Tudor sovereign that the church of his realms should be governed by neither Pope nor Patriarch without his consent, convened a Synod of Bishops at Frankfort in 794, and in the well-known Four Caroline Books refuted the edict of the Second Nicene Council, and decreed that images should not be worshipped though retained in churches. Our early English chronicler, Hoveden, writing about the same time, mentions the fact that Charlemagne communicated with England on the subject, and speaks himself of the adoration of images as execrated by the church.—(Cave, *ibid.* vol. i. pp. 611, 612.)

<sup>1</sup> “Tempore hujus concilii, atque ante æque ac postea, cultus imaginum oppugnatores, *Christi sanctorumque imagines, eo nomine ut adorentur factas, idola esse asseverarunt; ac pro inde Christianos, qui eas colunt, idolatriæ accusarunt: quo factum est ut ipsi, a contraria parte, sive ab imaginum cultoribus χριστιανοκατηγόροι* audirent.” Beveridge *Synodocon sive Pandectæ Canonum* . . . —Vol. II., Annotationes in Canones Concilii Nicenci secundi, p. 165, Oxon, 1672.

"An image or an idol do not differ in themselves," says Bishop Taylor, "but by use and custom of speaking, the church calling it an image so long as it is used lawfully; but it is an idol when it is used unlawfully."

Then he cites, as expressing his own opinion, the words of the author of the Caroline Books, "*nos imagines in basilicis positas, idola non nuncupamus; sed ne idola nuncupentur adorare et colere eas recusamus.*"—(*Bishop Taylor's Works*, vol. xii. Heber's ed. p. 394, "Of the Christian Law," etc.)

At this period, as well as after the Reformation, our Church endeavoured to take a *via media*, and agreed with the Council of Frankfort.

Gibbon sums up correctly the history of this time so far as it relates to the use of images in the non-Italian churches of Europe. "The churches of France" (he says), "Germany, England, and Spain steered a middle course between the adoration and the destruction of images, which they admitted into their temples, not as objects of worship, but as lively and useful memorials of faith and history."—(Vol. vi. ch. xlix. p. 165, Smith's ed.)

But as the Popes became, after the destruction of the Exarchate of Ravenna and the subjugation of the Greek Church, more and more absolute, in this, as in so many other instances, they succeeded in converting an use into an abuse, and in grafting a superstitious innovation upon an innocent and edifying practice of the Catholic Church.

Long before the period when Lyndwood collected and commented upon the constitutions of the English Church, the adoration of images was practised and enjoined in it; and it is not unimportant, with reference to the construction of the law in England after the Reformation, to consider what was the previous law on this subject.

We learn from Lyndwood that a provincial constitution of Archbishop Winchelsey, which relates to the duties of parishioners as to furnishing certain articles for Divine worship (*suppellex rei Divinæ*), orders them to provide certain books, ornaments for the minister and the altar, and, among other things, "*imagines in ecclesia, imaginem principalem in cancello . . . Reparationem navis ecclesiæ interius et exterius tam in imaginibus quam in fenestris vitreis.*" Lyndwood, in his gloss upon *imaginibus*, says, "*scilicet crucifixi et aliorum sanctorum;*" in his gloss upon *imagines*, he says, "*sanctorum,*" etc., and proceeds to explain that "*sunt namque tales imagines . . . sanctorum libri et scripturæ laicorum. Ipsarum tamen imaginum pictura non est adoranda sed res per ipsam representa.*" He says they subserve three purposes:—(1.) The instruction of the ignorant;

(2.) The reminding men of the Incarnation and of the examples of Saints ; (3.) The excitement of devotional feeling. He then considers at length the distinction of *latria* and *doulia*, and says that the crucifix is "*utroque modo veneranda*."—(*Lyndwood*, 1, 3, t. 27, pp. 251-3).

### III.

The subtle distinctions which the Church of Rome endeavoured to establish between the *λατρεία* due to our Lord, the *δουλία* due to the saint, the *ὑπερδουλία* due to the Blessed Virgin, even if they had been, as they were not, well founded, were unintelligible to the people, and led to a very gross abuse in the direct worship of the images themselves.

I agree with Mr. Phillpotts, that this abuse fell under the especial censure of those who conducted the Reformation in England, and that they were bent upon the extirpation of it. At the same time, the wiser heads among them well knew what is expressed in our 30th Canon, that "the abuse of a thing doth not take away the use of it," and that it was "the wisdom of the Church of England" in this matter, as well as in her Liturgy, 'to keep the mean between the two extremes.'—(Preface to Prayer-Book.)

Latimer expresses himself as follows:—

"I said this word 'saints' is diversely taken of the vulgar people: images of saints are called saints, and inhabitants of heaven are called saints. Now, by honouring of saints is meant praying to saints. Take honouring so, and images for saints, so saints are not to be honoured; that is to say, dead images are not to be prayed unto . . . and yet I showed the good use of them to be laymen's books, as they be called; reverently to look upon them, to remember the things that are signified by them, etc. And yet I would not have them so costly and curiously gilded and decked, that the quick image of God (for whom Christ shed his blood, and to whom whatsoever is done, Christ reputeth it done to himself) lack necessities and be unprovided for by that occasion, for then the layman doth abuse his book."—(*Sermons and Remains of Latimer*, p. 233, ed. Parker Society, 1845.)

And Archbishop Cranmer, in the *Book of Articles*, which he induced the Convocation of 1536 to pass, says of images:—

"That they be representers of virtue and good example. That they be stirrers of men's minds, and make them often to remember and lament their sins, especially the images of Christ and our Lady. That it was meet they should stand in the churches, but be none otherwise esteemed. That the bishops and preachers diligently teach the people according to this doc-

trine, lest there might fortune idolatry to ensue. That they be taught also that censuring, kneeling, and offering to images be by no means to be done (although the same had entered by devotion and fallen to custom), but only to God and in his honour, though it be done before the images."—(*Strype's Memorials of Archbishop Cranmer*, b. l. c. xi., vol. i. p. 160.)

In 1537 *The Institution of a Christian Man* was published. It had been composed in convocation three years before, under the auspices, it is believed, of Cranmer. It speaks as follows:—

"Second, That although all images, be they engraven, painted, or wrought in arras, or in any otherwise made, be so prohibited that they may neither be bowed down unto ne worshipped (forasmuch as they be the works of man's hand only), yet they be not so prohibited, but that they may be had and set up in churches, so it be for none other purposes, but only to the intent that we (in beholding and looking upon them, as in certain books, and seeing represented in them the manifold examples of virtues which were in the saints, represented by the said images) may the rather be provoked, kindled, and stirred to yield thanks to our Lord, and to praise him in his said saints, and to remember and lament our sins and offences, and to pray God that we may have grace to follow their goodness and holy living. As for an example: The image of our Saviour, as an open book, hangeth on the cross in the rood, or is painted in cloths, walls, or windows, to the intent that beside the examples of virtues which we may learn at Christ, we may also be provoked to remember his painful and cruel passion, and also to consider ourselves, when we behold the said image, and to condemn and abhor our sin, which was the cause of his so cruel death, and thereby to profess that we will no more sin."<sup>1</sup>

In Cromwell's injunctions in the King's name, there were directions to the clergy "to remove such images as had been superstitiously applied to pilgrimages and offerings, or treated with over-proportioned regard." Curates were to instruct the people that the use of images was to inform the unlearned in the history of saints, and to refresh their memory.

Leaving the reign of Henry the Eighth, we come to that of Edward the Sixth (1546-7), the ecclesiastical acts of which require careful enumeration and investigation.

In 1547, some of the Homilies, twelve in number, were put forth for the first time; they were chiefly compiled by Archbishop Cranmer; only one of them referred to images and relics, subjects, by the way, usually treated of together at this

<sup>1</sup> *Formularies of Faith put forth by authority during the reign of Henry VIII*, pp. 135, 136. Reprinted at the Clarendon Press, Oxford, 1825.

time. It was the Homily of Good Works. This is its language as to images:—

“Never had the Jews, in their most blindness, *so many pilgrimages unto images, nor used so much kneeling, kissing, and censuring of them as hath been used in our time.* Sects and *feigned* religions were neither the fortieth part so many among the Jews, nor more superstitiously and ungodly abused, than of late days they have been among us . . . keeping in divers places, as it were, marts or markets of merits, being full of their holy relics, *images*, shrines, and works of overflowing abundance ready to be sold; and all things which they had were called holy—holy cowls, holy girdles, holy pardons, holy beads, holy shoes, holy rules, and all full of holiness. And what thing can be more foolish, more superstitious or ungodly, than that men, women, and children should wear a friar’s coat to deliver them from agues or pestilence? or when they die, or when they be buried, cause it to be cast upon them, and hope thereby to be saved.<sup>1</sup>

“ . . . Let us rehearse some *other kinds of papistical superstitions and abuses*, as of beads, lady psalters, and rosaries, of fifteen O’s of St. Bernard’s verses, of St. Agathe’s letters, of purgatory, of masses satisfactory, of stations and jubilees, of *feigned relics*, of hallowed beads, bells, bread, water, palms, candles, fire, and such other. . . .”—(Homily “of Good Works,” third part.<sup>2</sup>)

#### IV.

In the year 1549, injunctions were issued by Edward VI., by virtue of 31 Hen. VIII. c. 8, confirmed by 34 and 35 Hen. VIII. c. 23, the Proclamation Statutes. In these injunctions it is said (*Card. Doc. Ann.*, vol. i. pp. 6, 7):—

“Besides this, to the intent that all superstition and hypocrisy crept into divers men’s hearts, may vanish away, they shall not set forth or extol any *images*, relics, or miracles, for any superstition or lucre, nor allure the people by any enticements to the pilgrimage of any saint or *image*; but reproving the same, they shall teach that all goodness, health, and grace ought to be both asked and looked for only of God, as of the very author and giver of the same, and of none other.

“2 Item. That they, the persons above rehearsed, shall make or cause to be made in their churches, and every other cure they have, one sermon every quarter of the year at the least, wherein they shall purely and sincerely declare the word of God; and in the same exhort their hearers to the works of

<sup>1</sup> At page 50 of the Oxford edition.

<sup>2</sup> *Ibid.* p. 53.



faith, mercy, and charity, specially prescribed and commanded in scripture; and that works devised by men's fantasies, besides scripture, as wandering to pilgrimages, offering of money, candles, or *tapers to relics or images, or kissing and licking of the same, and praying upon beads, or such like superstition*, have not only no promise of reward in scripture for doing of them, but contrariwise, great threats and maledictions of God, for *that they be things tending to idolatry and superstition*, Which of all other offences God Almighty doth most detest and abhor, for that the same diminish most his honour and glory.

"3 Item. That such *images* as they know in any of their cures to be or have been so *abused with pilgrimage* or offerings of anything made thereunto, or shall be hereafter censured unto, they (and none other private persons) shall, for the avoiding of that most detestable offence of idolatry, forthwith take down, or cause to be taken down, and destroy the same; and shall suffer from henceforth no torches, nor candles, tapers, or *images* of wax to be set afore any *image* or picture, but only two lights upon the high altar, before the sacrament, which for the signification that Christ is the very true light of the world, they shall suffer to remain still, admonishing their parishioners that *images* serve for no other purpose but to be a remembrance, whereby men may be admonished of the holy lives and conversation of them that the said *images* do represent; which *images* if they do abuse for any other intent, they commit idolatry in the same, to the great danger of their souls."

(11.) "Also, if they have heretofore declared to their parishioners anything to the extolling or setting forth of pilgrimages, relics, or *images*, or lighting of candles, *kissing, kneeling, decking of the same images, or any such superstition*, they shall now openly, before the same, recant and reprove the same; showing them (as the truth is) that they did the same upon no ground of scripture, but were led and seduced by a common error and abuse, crept into the Church through the sufferance and avarice of such as felt profit by the same."—(*Ibid.* p. 10.)

(28.) "Also, that they shall take away, utterly extinct, and destroy all shrines, covering of shrines, all tables, candlesticks, trindles, or rolls of wax, *pictures, paintings, and all other monuments of feigned miracles, pilgrimages, idolatry, and superstition*; so that there remain no memory of the same in walls, glass windows, or elsewhere within their churches or houses. And they shall exhort all their parishioners to do the like within their several houses. And that the churchwardens, at the common charge of the parishioners in every church, shall provide a comely and honest pulpit, to be set in a convenient place within the same, for the preaching of God's word."—(*Ibid.* p. 17.)

By this proclamation, having at the time statutable authority, it is clear that only abused images, including pictorial representations in windows and other places, were ordered to be removed. The next reference is to a document which has been greatly relied upon by the respondent.

On the 24th February 1547, Cranmer sent to the Bishop of London what is called "*Mandatum ad amovendas et delendas imagines*," in which, among others, is the following passage:—

"After our right hartye recommendations to your good lordship; where now of late in the king's majestie's visitation, amonge other godlye injunctions commaunded to be generally observed throughe all partes of this his highnes realme, one was set forthe, for the *taking downe of all suche images as had at any tyme ben abused with pilgrimages, offerings, or censinges*; albeit that this said injunction hathe in many partes of the realme ben wel and quyetlye obeyed and executed, yet in many other places mucche stryfe and contentyon hath rysen and dayly ryseth, and more and more encreaseth, about the execution of the same, some men beyng so superstytious or rather wylfull, as they wold by theyr good wylles retayne all such *images styll, although they have beene mooste manyfestlye abused*, and in some places also the images whiche by the saide injunctions were taken downe, be now restored and set up againe, and almoste in every place ys contentyon for images, whether they have been abused or not; and whiles these men go about on both sides contentyouslye to obtaine theyr mindes, contending whether this or that image hath been offered unto, kyssed, censed, or otherwyse abused, partyes have in some places ben taken in suche sorte, as further inconvenyence is very like to ensue yf remedie be not provided in tyme; considering therefore that allmost in no places of this realme ys any sure quyetness; but where all images be hoolly taken awaye and pulled downe already, to the intent that all contentyon in everye parte of this realme for this matter may be clerely taken awaye, and that the lyvely images of Chryste shulde not contende for the deade images, whiche be things not necessary, and without whiche the churches of Christ contynued most godlye many yeres. We have thought good to signify unto you that his highnes pleasure with th'advyse and consent of us the lord protectour and the reste of the counsell ys, that immediately upon the sight hereof, with as convenyent diligence as you maye, you shall not onlye gyve ordre that *all the images remayninge in any church or chappell* within your diocese be removed and taken away, but also by your letters signifeye unto the reste of the bisshopes within your province his highnesse pleasure for the

lyke order to be gyven by them and every of them within their several dioceses; and in th'execution thereof we requyre both you and the reste of the bisshopes foresaid to use suche foresight as the same may be quyetlye donne with as good satisfaction of the people as may be."—(*Ibid.* p. 47.)

This document, whatever name it is entitled to, orders the removal of "all the images remaining in any church or chapel."

The injunctions I held in *Martin v. Maconochie* had legal authority.

But this document is of another kind. It derived no validity from the Supremacy Act, or from the Proclamation Act, for that was repealed before it issued. It is in truth a Latin letter by Cranmer to the Bishop of London, in which he recites an English letter from the Council to him. That English letter is not signed by the King. It indeed purports to be issued by him, with the consent of the Protector and Council, who do sign it; but it is certainly not signed by the King, nor issued with any of the usual formalities; while I observe that a very similar document, called "The King's order for bringing in Popish Rituals," in 1549, contains, at the beginning, "By the Kinge," and at the end, "By the Kinge, *inscriptio hæc est.*"—(*Card. Doc. Ann.*, vol. i. pp. 85-87.) The injunctions are subscribed by the King. Sir John Dodson treated this document, of the 24th February 1547, as of no legal authority. Burnet speaks of it as "a letter." I do not recollect that in any of the cases in which this document has been discussed, the force of a law was ever ascribed to it, or in any of the subsequent ecclesiastical instruments. It was referred to in the judgment of the Privy Council, but I think it is a misconception to suppose that they decided it to have legal authority. It was introduced as an historical fact, and they considered it in that light. Their Lordships say:—"On the 21st of February<sup>1</sup> 1548, N.S., "another proclamation was issued, upon the authority of which *it is contended* that all images, including crosses, were to be taken down." They do not say the contention was founded in law, and they inadvertently call the document a proclamation, which it was not. They afterwards say:—" . . . The intention was not to introduce within the inhibition articles of a description not before forbidden, but to do away with the distinction between images which had been and images which had not been abused."—(*Westerton v. Liddell*, Moore's Special Report, pp. 168-9.) That was undoubtedly the effect of the document, but I do not remember that the legal character of it was ever argued before them. They treat it, I think, as an historical fact. Whatever

<sup>1</sup> The date of the Council's letter is February 21; of the issue of the *mandatum* by Cranmer, February 24; both are in the same instrument.

was its character, it could not, in their opinion, apply to crosses, the legality of which they were considering.

In the same year, but subsequently to this letter, Cranmer issued his Visitation Articles to the diocese of Canterbury, and among them the following:—

“Item. Whether they have not removed, taken away, and utterly extincted and destroyed in their churches, chapels, and houses, all images, all shrines, coverings of shrines, all tables, candlesticks, trindles or rolls of wax, pictures, paintings, and all other monuments of feigned miracles, pilgrimages, idolatry and superstition, so that there remain no memory of the same in walls, glass windows, or elsewhere.”—(*Cardwell, Doc. Ann.*, vol. i. p. 50.)

This is a repetition, almost verbatim, of the twenty-eighth injunction already referred to, except that it is extended of houses, and that the words all images are introduced; but it seems to me that they, like the pictures and the painted windows, must be in the category of monuments of feigned miracles, pilgrimages, and idolatrous superstition. The inquiry is, whether all images of that kind had been removed.

It may be as well to observe here, that in construing the word image, as used in the ancient and modern formularies of our Church, I adopt generally the definition of Dr. Richardson, “anything made, formed, figured, or fashioned, graved, carved, or painted, in imitation, likeness, or representation, a semblance or resemblance, picture or copy, a picture, statue, or effigy.”—(*Dict.*, tit. Image.)

It appears with respect to this very Cathedral of Exeter, that in the year 1321 there were payments made *pictori pro imaginibus*, and for a plate whereon to grind his colours.—(*Oliver's Hist. of Exeter Cathedral*, p. 185.)<sup>1</sup> I mean to say that the word “image” properly embraces the work of the painter as well as that of the sculptor, though it may occasionally be used in a more limited sense.

The statute 3 & 4 Edward VI., cap. 10, entitled “An Act for the abolishing and putting away of divers books and images,” enacts (sect. 1) “That all books called Antiphoners, Missals, Grailes, Processionals, Manuals, Legends, Pies, Portuasses, Primers in Latin or English, Couchers, Journals, Ordinals, or other books or writings whatsoever heretofore used for service of the Church, written or printed in the English or Latine tongue, other than such as are or shall be set forth by the King's Majesty, shall be by authority of this present Act clearly and utterly abolished, extinguished, and forbidden for ever to

<sup>1</sup> *Lives of the Bishops of Exeter, and a History of the Cathedral*, by George Oliver, D.D., Exeter. 1861.

be used or kept in this realm, or elsewhere within any the King's dominions.

Sect. 2 enacts, "That if any person or persons, of what estate, degree, or condition soever he, she, or they be, body politicke or corporate, that now have or hereafter shall have in his, her, or their custody, any the books or writings of the sorts aforesaid, or any *images* of stone, timber, alabaster, or earth, graven, carved, or *painted*, which heretofore have been taken out of any church or chapel, or yet stand in any church or chapel, and do not before the last day of June next ensuing deface or destroy, or cause to be defaced and destroyed, the *same images* and every of them, and deliver or cause to be delivered all and every the same books to the mayor, bailiff, constable, or churchwardens of the town where such books then shall be, to be by them delivered over openly within three months next following after the said delivery to the archbishop, bishop, chancellor, or commissary of the same diocese, to the intent the said archbishop, bishop, chancellor, or commissary, and every of them, cause them immediately either to be openly burnt or otherwise defaced and destroyed; shall for every such book or books willingly retained in his, her, or their hands or custody, within this realm, or elsewhere within any of the king's dominions, and not delivered as is aforesaid, after the said last day of June, and be thereof lawfully convict, forfeit and lose to the king our sovereign lord, for the first offence xx s. and for the second offence shall forfeit and lose (being thereof lawfully convict) iv li. and for the third offence shall suffer imprisonment at the king's will."

Sect. 6 provides, "That this act, or anything therein contained, shall not extend to any image or picture set or graven upon any tomb in any church, chapel, or churchyard, only for a monument of any king, prince, nobleman, or other dead person, which hath not been commonly reputed and taken for a saint, but that such pictures and images may stand and continue in the like manner and form as if this Act had never been had or made; anything in this Act to the contrary in any wise notwithstanding."

This statute was repealed by 1st Mar. st. 2, c. 2, which statute is repealed by 1 Jac. I. c. 25, s. 48.

To me the construction of this extraordinary statute is by no means plain.

It should be remarked, in the first place, that there is a letter of Cranmer to the Archdeacon of Canterbury in 1549, in which he recites that he has received letters missive, signed by the king, from the king in council, stating that the Book of Common Prayer, being commanded to be used by all persons

in the realm, nevertheless "dyvers unquyette and evill disposed persons sithence the apprehension of the Duke of Sommersett, have noysed and bruted abroad that they sholde have agayne their old Lattenne service, their conjured bredde and water, with such like vayne and superstitiouse ceremonies, as though the settinge forth of the saide boke had been th'onlie acte of the saide duke; we therefore . . . to put away all such vayne expectation, . . . have thought goode . . . to comande," etc., "all antiphoners," etc., mentioning the same books as are in the statute, to be delivered up."—(*Card., Doc. Ann.*, vol. i. p. 85; Perry, *Church Ornaments*, pp. 56-61.) This order is dated the 25th of December, "the third yeare of our reigne," but it was not issued till the 14th of February 1549. This statute appears to have been passed on the 1st of February. The order says nothing about images, and is obviously intended to prevent the restoration of the Latin service by the destruction of the Latin office books in every part of the kingdom. The statute mentions both books and images, graven, carved, or painted, including therefore all pictures; but what does it direct with respect to them? That those who have in their custody any such images, which have heretofore been taken out of, or yet stand in any church, shall deface and destroy them, but shall deliver up the books to certain authorities. There is a penalty for not destroying the books, but none for not destroying the images. The object would seem to be to prevent the restoration to the church, at that time, of the same images which had been abused by worship, and which had been, or ought to have been, removed.

The Privy Council in *Westerton v. Liddell* (Moore, Special Report, p. 171), said of this statute: "No doubt, however, it implies that to retain them is illegal, but it relates, in their Lordships' opinion, to the destruction of images already ordered to be removed, but which either had not been removed, or, having been so, were still retained for private veneration and worship. . . ."

But I doubt very much whether this Act ought to be construed to prohibit the erection of all images, for the future, in all churches,—a question not discussed before the Privy Council. There are no express words to this effect. I incline to the opinion that it had a temporary purpose in view, namely, to prevent the restoration of the identical images to churches which had been, or ought to have been, taken out of them. It was deemed, as the Thirty-eighth Article deems the Homily on the Peril of Idolatry, "necessary for these times." I do not think this Act was ever referred to in the ecclesiastical documents of Queen Elizabeth's reign. I have said that it was

repealed by Mary, and it was restored by James I. by the repeal of Mary's Act. But surely it is reasonable to expect that if it contained universal and perpetual prohibitions of images and books, some reference would have been made to it in the reign of Elizabeth; more especially when it is remembered that the Homily "against the Peril of Idolatry," in the second book, published by authority in 1562, referred to in the Thirty-fifth of the Thirty-nine Articles, and which is, in fact, a fervid controversial sermon against the use as well as the abuse of images, should not, unless I have overlooked it, make any reference to the fact that the statute had abolished all images in 1549, and, as it is contended, the Order in Council of 1547.

The letter of Bishop Sandys to Peter Martyr, dated April 1, 1560, and part of which is referred to by the learned Assessor, leads me, on a study of the whole, to a conclusion different from that which he arrived at. Bishop Sandys writes:—

"We had not long since a controversy respecting images. The Queen's Majesty considered it not contrary to the Word of God, nay, rather for the advantage of the Church, that the image of Christ crucified, together with those of the Virgin Mary and St. John, should be placed as heretofore in some conspicuous part of the church, where they might more readily be seen by all the people. Some of us Bishops thought far otherwise, and more especially as all images of every kind were, at our last visitation, not only taken down, but also burnt, and that too by public authority; and because the ignorant and superstitious multitude are in the habit of paying adoration to this idol above all others. As to myself, because I was rather vehement in this matter, and could by no means consent that an occasion of stumbling should be afforded to the Church of Christ, I was very near being deposed from my office, and incurring the displeasure of the Queen. But God, in whose hand are the hearts of kings, gave us tranquillity instead of a tempest, and delivered the Church of England from stumbling-blocks of this kind."—(*Zurich Letters*, First Series, No. 71, Parker Society Ed., 1842, pp. 73-74.) There is no reference in this letter to the statute of Edward VI. or the letter of Cranmer.

By this construction of the statute at least the most monstrous consequences are avoided. Can it really be the law that any person now possessing, in his private house, or any body, politic or corporate, possessing in their library any one of these books is liable to these penalties; not only all Her Majesty's Roman Catholic subjects, but all persons, of whatever religion

they may be, who have a collection of books of devotion in their private houses? Is every picture, painted on canvas or glass, or carved in stone, for ever forbidden to the Church of England? I hope I am not wrong in having recourse to a construction of the statute which avoids these consequences.

In Queen Elizabeth's injunctions "concerning both the clergy and laity of this realm," issued in 1559, the first year of her reign, are the following passages:—

III. "Item, that they, the parsons above rehearsed, shall preach in their churches and every other cure they have, one sermon every month of the year at the least, wherein they shall purely and sincerely declare the word of God, and in the same exhort their hearers to the works of faith, as mercy and charity, specially prescribed and commanded in Scripture; and that the works devised by man's fantasies, besides Scripture (as wandering of pilgrimages, setting up of candles, praying upon beads, or such like superstition), have not only no promise of reward of Scripture for doing of them, but contrariwise great threatenings and maledictions of God, for that they be things tending to idolatry and superstition, which of all other offences God Almighty doth most detest and abhor, for that the same diminish most his honour and glory."—(*Card., Doc. Ann.*, vol. i. pp. 212, 213.)

XXIII. "Also, that they shall take away, utterly extinct, and destroy all shrines, covering of shrines, all tables, candlesticks, trindalls, rolls of wax, *pictures, paintings, and all other monuments of feigned miracles, pilgrimages, idolatry, and superstition, so that there remain no memory of the same in walls, glass windows, or elsewhere within their churches and houses.*" And in Injunction XXV., men are exhorted not to bestow their substance upon "the *decking of images*" and "other like blind devotions."—(*Ibid.* p. 221.)

In 1551, Burnet thinks, previously to the last injunctions, certain bishops and divines addressed the Queen against the use of images, citing passages in Deuteronomy, St. John, Tertullian, and other writers. In 1560 Bishop Jewell put out his famous challenge to the Papists, defying them to prove, *inter alia*, "that images were then set up in the churches" (that is, in the primitive churches) "*to the intent the people might worship them,*" using almost the words of St. Stephen, already adverted to, but very remarkable words to have been used in 1560, showing pretty clearly that he who was supposed to be the writer of the Homily on the peril of idolatry did not object on principle to all images in churches, but to images set up to be worshipped.



About the same time the Queen put out a "proclamation against the defacers of monuments in churches."

"Elizabeth.—The Queen's Majesty understanding that by means of sundry people, partly ignorant, partly malicious or covetous, there hath been of late years spoiled and broken certain ancient monuments, some of metal, some of stone, which were erected up as well in churches as in other public places within this realm, only to show a memory to the posterity of the persons there buried, or that had been benefactors to the buildings or dotations of the same churches or public places, and not to nourish any kind of superstition; by which means not only the churches and places remain at this present day spoiled, broken, and ruined, to the offence of all noble and gentle hearts, and the extinguishing of the honourable and good memory of sundry virtuous and noble persons deceased; but also the true understanding of divers families in this realm (who have descended of the blood of the same persons deceased) is thereby so darkened as the true course of their inheritance may be hereafter interrupted, contrary to justice; besides many other offences that hereof do ensue, to the slander of such as either gave or *had charge in times past, only to deface monuments of idolatry and false feigned images* in churches and abbeyes; and therefore, although it be very hard to recover things broken and spoiled, yet both to provide that no such barbarous disorder be hereafter used, and to repair as much of the said monuments as conveniently may be, Her Majesty chargeth and commandeth all manner of persons hereafter to forbear the breaking or defacing of any parcel of any monument, or tomb, or grave, or other inscription and memory of any person deceased, being in any manner of place: or to break any image of kings, princes, or noble estates of this realm, or of any other that have been in times past erected and set up for the only memory of them to their posterity, in common churches, and not for any religious honour, or to break down and deface *any image in glass windows* in any church without consent of the ordinary, upon pain that whosoever shall herein be found to offend, to be committed to the next gaol. . . ."—(*Card., Doc. Ann.*, vol. i. p. 289.)

These orders of the Queen relate to false feigned images; that is, I suppose, images of false saints or false miracles.

The formulary of the Church most relied upon by the respondent was one of the Homilies published in this reign. I think their authority has been much overstated. They are referred to in the 46th, 49th, and 80th of our cautions; and the Thirty-fifth of our Articles ("Of the Homilies") says:—

"The second book of Homilies, the several titles whereof we

have joined under this Article, doth contain a godly and wholesome doctrine, and necessary for these times, as doth the former book of Homilies, which were set forth in the time of Edward the Sixth; and therefore we judge them to be read in churches by the ministers, diligently and distinctly, that they may be understood of the people."

Bishop Burnet, speaking of the Thirty-fifth Article, observes, I think with accuracy:—

"That by our approbation of the two books of Homilies it is not meant that every passage of scripture or argument that is made use of in them is always convincing; all that we profess about them is, that they contain a godly and wholesome doctrine."

Other writers of eminence have expressed the same opinion.

The Homily against the Peril of Idolatry was directed against the worship of images. It is impossible not to see that it is in reality a strong controversial tract, perhaps "necessary for those times," but by no means having the force of statutable authority for all its propositions for all times.

The Twenty-second of our Articles of Religion says:—

"The Romish doctrine concerning purgatory, pardons, *worshipping and adoration, as well of images as of reliques*, and also invocation of saints, is a fond thing vainly invented, and grounded upon no warranty of Scripture, but rather repugnant to the Word of God."

That is undoubtedly the doctrine of our Church. This article, written in 1553, was adopted by authority in 1562. The article of the Council of Trent, which was dated December 4, 1563, "*de invocatione, veneratione, et reliquiis sanctorum et sacris imaginibus*,"<sup>1</sup> though it condemns idolatry, orders due

<sup>1</sup> "... Imagines porro Christi, deiparæ Virginis, et aliorum sanctorum, in templis præsertim habendas, et retinendas, eisque *debitum honorem, et venerationem* impertiendam; non quod credatur inesse aliqua in iis divinitas, vel virtus, propter quam sint colendæ; vel quod ab eis sit aliquid petendum; vel quod fiducia in imaginibus sit figenda; veluti olim fiebat a gentibus, quæ in idolis spem suam collocabant; sed quoniam honos, qui eis exhibetur refertur ad prototypa, quæ illæ representant; ita ut per *imagines*, quas osculamur, et coram quibus caput aperimus et procumbimus, Christum adoremus; et sanctos, quorum illæ similitudinem gerunt, veneramur. Id quod conciliorum, præsertim vero secundæ Nicænæ synodi decretis contra imaginum oppugnatores est sancitum.

"Illud vero diligenter doceant episcopi, per historias mysteriorum nostræ redemptionis, picturis, vel aliis similitudinibus expressas, erudiri, et confirmari populum in articulis fidei commemorandis et assidue recolendis; tum vero ex omnibus sacris imaginibus magnum fructum percipi, non solum quia admonetur populus beneficiorum et munerum," etc.—"*De Invocatione, veneratione, et reliquiis sanctorum, et sacris imaginibus*."—Canones et decreta sacro sancti . . . Concilii Tridentini, . . . Opera et Studio Judoci Le Plat, Sessio xxv. p. 279, Antwerp 1779.

honour and worship (*venerationem*) to be paid to images of our Lord, the Blessed Virgin, and the Saints. The Church of England, holding her middle course, says this worshipping has no warranty in Scripture, *immo verbo Dei contradicit* (according to the Latin version), but in no article does she say that the erecting of all images in churches is repugnant to the Word of God. On the contrary, Bishop Taylor observes that "the wisdom of the church was remarkable in the variety of sentences concerning the permission of images;" that "at first, when they were blended in the dangers and impure mixtures of Gentilism, and men were newly recovered from the snare, and had the reliques of a long custom to superstitions and false worshippings, they endured no images but merely civil; but that as the danger ceased, and Christianity prevailed, they found that pictures had a natural use of good concernment to move less knowing people, by the representment and declaration of a story; and then they, knowing themselves permitted to the liberties of Christianity, and the restraints of nature and reason, and not being still weak under prejudice and childish dangers, but fortified by the excellence of a wise religion, took them into lawful uses." . . . Soon afterwards he uses these remarkable expressions: "they transcribed a history . . . into a table, by figures making more lasting impressions than by words and sentences. While the Church stood within these limits she had natural reasons for her warrant, and the custom of several countries, and no precept of Christ to countermand it."—(*Bp. Taylor's Tenth Disc. on the Decalogue.*)<sup>1</sup>

These wise observations lead me to the consideration of an argument put forward by the appellants, which deserves especial notice.

It is to this effect, that assuming for the sake of argument the letter of Cranmer to be law, and the statute of Edward not merely to prohibit the replacing or retaining of particular images in churches at a particular period, but to contain a general enactment rendering illegal for the future images in all churches; nevertheless even on this assumption the present structure would not fall under the edge of these prohibitions, inasmuch as it is not in the sense of them, an image or a series of images.

The images contemplated in these prohibitions were detached separate images, which, if immoveable, might be kissed, decked with robes and jewels, worshipped; if moveable, carried in procession. These are the class of images of which Barrow speaks in his *Exposition of the Decalogue*, on the Second Commandment. He censures "affording to them the same expressions of reverence and respect, that we do or can present unto

<sup>1</sup> *Bishop Taylor's Works*, Heber's ed., vol. iii. p. 15.

God himself, with great solemnity dedicating such images to them, with huge care and cost, decking them, with great semblance of devotion, saluting them, and casting themselves down before them; carrying them in procession, exposing them to the people, and making long pilgrimages to them.”<sup>1</sup> . . .

But this reredos contains an historical emblematical representation of certain scenes in the history of our redemption, pictures in stone *bassi relievi*, not of detached figures, but of a particular story. Let me consider this argument; and first, I must express my decided opinion that whether the structure be legal or not, it is in no way distinguishable, having regard either to the principle or to the letter of the prohibitions, from paintings on canvas, or on the wall, or on the windows.

Quite consistently the Homily on the Peril of Idolatry commends Epiphanius, who “rejected not only carved, graven, and molten images, but also painted images out of Christ’s church,”<sup>2</sup> and the bishops who would not allow paintings on cloths or on walls.

It was mainly on this ground that the painted window in St. Margaret’s Church was vehemently, though unsuccessfully, opposed.

The substance of the articles against the churchwardens in that case was “that they had caused to be set up, in defiance of the laws and canons ecclesiastical, a painted glass in the eastern window, over the communion table, whereon is represented by delineation and colours one or more superstitious picture or pictures, and more particularly, the painted image of Christ upon the Cross.”<sup>3</sup>

I do not think that the carved delineations on this reredos are liable to the abuses, the existence of which caused the orders for the removal of images; they are not liable to have candles burnt before them; to be decked with jewels and precious raiment, or to be kissed or worshipped, or treated as workers of false and feigned miracles; I do not think that according to any reasonable probability this stone screen presents any “peril of idolatry” to the frequenters of the church.

I am fortified in this opinion by considerable authority. In “The Homily against the Peril of Idolatry,” I find it stated that the “Bishop of Nola caused the walls of the temple to be painted with stories taken out of the Old Testament, that the people, beholding and considering those pictures, might the

<sup>1</sup> Barrow, *An Exposition of the Decalogue*, Second Commandment. (*Works of Isaac Barrow, D.D.*, vol. vi. p. 496, ed. 1830.)

<sup>2</sup> The second part of the Homily against Peril of Idolatry (at page 173 of the Oxford edition).

<sup>3</sup> *Wilson’s Ornaments of Churches* (1761), p. 13 (Preface).

better abstain from too much surfeiting and riot." . . . "And these" (says the writer) "were the first paintings in churches that were notable of antiquity. And so by this example came in painting, and afterward images of timber and stone, and other matter, into the churches of Christians. Now, if ye well consider this beginning, men are not so ready to worship a picture on a wall, or in a window, as an embossed and gilt image, set with pearl and stone. And a process of a story painted with the gestures and actions of many persons, and commonly the sum of the story written withal, hath another use in it than one dumb idol or image standing by itself. But from learning by painted stories it came by little and little to idolatry."<sup>1</sup>

Calvin, in one of his chapters of his *Institutes*,<sup>2</sup> devoted to the question of pictures of God, and of images generally, after severe blame of the former, and of all worship of images, says:—"Neque tamen ea superstitione teneor, ut nullas prorsus imagines ferendas censeam. Sed quia sculptura et pictura Dei dona sunt, purum et legitimum utriusque *usum* requiro; ne quæ Dominus in suam gloriam, et bonum nostrum nobis contulit, eo non tantum *polluantur* præpostero abusu, sed in nostram quoque perniciem convertantur. *Deum effingi visibili specie* nefas esse putamus, quia id vetuit ipse, et fieri sine aliqua gloria ejus deformatione non potest. . . ." Then he says, God is not to be worshipped in the image nor the image as God; and he continues, "Restat igitur ut ea sola pingantur ac sculpantur quorum sint capaces oculi: *Dei* majestas quæ, oculorum sensu longe superior est, ne indecoris spectris corrumpatur. In eo genere partim sunt historiæ ac *res gestæ*, partim *imagines* ac formæ corporum, sine ulla rerum gestarum notatione. *Priores* usum in docendo vel admonendo aliquem habent: *secundæ*, quid præter oblectationem affere possunt non video. Et tamen constat tales fuisse omnes propemodum imagines quæ hactenus in templis prostituerunt." . . . He proceeds to point out the folly of these and the frequently indecent license of their execution, and he adds, . . . "etiam si nihil vitii inesset, nihil tamen habere ad docendum momenti." And commenting on Psalm cxv. 6-8, he says: "Votandum autem non minus similitudinem vetari quam sculptile: quo inepta Græcorum cautio refutatur. Belle enim defunctos se putant si Deum non sculpant, dum in picturis licentiosius quam ullæ aliæ gentes lasciviunt. Atqui Dominus non a statuario

<sup>1</sup> The second part of the Homily against Peril of Idolatry (at page 192 of the Oxford edition).

<sup>2</sup> Calvin, *Institutio Christianæ Religionis*, lib. i. cap. xi. s. 12, dedicated by Calvin to Francis the First, 1536, A.D. (ed. Tholuck, vol. i. p. 77, Berol. 1834).

modo sibi erigi effigiem sed a quolibet artifice effingi prohibet.”<sup>1</sup>  
—(*Ib.* s. 4.)

In Denmark, where the Evangelical Lutheran Church is established as the church of the State, there is the Vor Vroe Kirche, our Lady's Church, the principal church in Copenhagen. In the pediment is sculptured a group of *St. John preaching in the Wilderness*; in the vestibule, a frieze, in which is represented *the Entry into Jerusalem*; in the nave the twelve Apostles; over the altar our Lord is sculptured, and in the chancel the Baptismal Angel, and there are various *bassi relievi* of scriptural subjects.

There was a solemn inauguration of these figures—the glory of Thorwaldsen's genius—in the church in 1839.

## V.

I have now to consider the effect of the judgment delivered in the Court of Arches in the year 1684.

It appears that shortly before that time certain parishioners applied for a faculty to put up in painting, as I understand, pictures of the thirteen Apostles in the parish church of Moulton, in the diocese and county of Lincoln, and I think over the Holy Communion Table, but certainly at the east end. The Surrogate of the Chancellor of Lincoln granted the faculty, but the Chancellor revoked it, and the Bishop, Dr. Thomas Barlow, appears also to have refused his consent. An appeal was prosecuted to the Court of Arches.

As to the Bishop, I learn from Wood that “He was esteemed by those who knew him well to have been a thorough-paced Calvinist, though some of his writings show him to have been a great scholar, profoundly learned both in Divinity and the civil and canon law.”—(*Wood's Athenæ Oxonienses*, vol. iv. 335, ed. Bliss.)

He wrote various tracts on “Cases of Conscience,” and among them, *A breviat of the case concerning setting up images in the parish church of Moulton*. The tract was published contrary to his expressed testamentary wishes, after his death; and the bookseller writes a preface which shows that he clearly misunderstood the proceedings in the Arches; his error appears, as is often the case, to have been perpetuated by copying. It appears again in a paper called the *Old Whig*, in 1736, and is thence transcribed into a

<sup>1</sup> “Ex dictis patet imperitia hæreticorum nostrorum, dum asserunt, omnes omnino imagines hic jure naturæ vetari. Unde Calvinus videns quam absone hoc dicatur, licet tacite omnes imagines carpat; tamen asseverat, non omnes, sed Dei tantum imaginem hic vetari.”—(*Cornelius a Lapide*, Commentar. in Deut. chap. v. verse 8, at page 739 of the second edition, published at Venice, 1717.)

history of the county of Lincoln.<sup>1</sup> Unfortunately at the time of the trial there were no published ecclesiastical reports; but I have been supplied from the records of the Arches Court with a copy of the libel of appeal, and of the sentence of the Judge. The libel appears to contain, as probably was the case in those days, a summary of the pleadings on both sides in the court below; the case was entitled "*Cook and Others v. Tallent.*"

Tallent, who was a clergyman, and also a parishioner, objected to the grant of a Faculty "pro erectione sive pictione effigierum apostolorum in ecclesia," and alleged "that, by the book of Homilies, and more especially by the Homilies against the Peril of Idolatry, and also by the injunctions of King Edward the Sixth and Queen Elizabeth, the painting and setting up the apostles' effigies in any church or chapel is very dangerous in regard they are superstitious, and do tend to idolatry (as by the said homilies and injunctions to which he refers himself) it doth at large appear. Wherefore he prayed the faculty obtained from the said Court might be pronounced null and void, inso-much as doth relate to the setting up of the said effigies."

It was alleged, on the other hand, by the parishioners, "that the setting up of those pictures was out of an honest and pious intention to beautify the said church, and a work commendable and not to be discountenanced, being not at all repugnant to the injunctions of King Edward the Sixth, Queen Elizabeth, or the Homilies of the Church of England, nor monuments of feigned miracles, nor do any ways tend to superstition." The statute of Edward the Sixth is not referred to. . . . "That the setting up of the said effigies was no ways offensive to them or any of them, saving only one Thomas Scarlett, who did object against the same as superstitious and idolatrous. *Licetque insuper allegaverint* that by the opinion and judgment of all orthodox divines the painting of the effigies of the blest apostles in any church or chapel is not idolatrous or superstitious, but do serve only for ornament, and to put people in remembrance of the holy lives and conversations of those they do represent; and that by the injunctions of Edward the Sixth and the ecclesiastical laws of this land, it is required that all persons and vicars and other ecclesiastical persons shall admonish their parishioners that the same do serve for no other end and purpose; and, therefore, since there is no apparent danger of superstition, the effigies of the holy Apostles in the parish church of Moulton aforesaid may and ought to continue as they are now painted, otherwise it may be of dangerous consequence, since that under such pretended fears of superstition and idolatry most of the churches, chapels, colleges, and other pious and

<sup>1</sup> See *Allen's History of the County of Lincoln*, vol. i. 335. Note.

religious places in England may be in danger of being pulled down and demolished, and so in all probability the hatred of idolatry would usher in licentious sacrilege."

The case appears to have been formally heard before a very learned person, Sir Richard Lloyd, the then Dean of the Arches, and he pronounced in favour of the lawfulness of the images, granted the Faculty, and condemned the opposing party in costs.

It is remarkable that the sentence is not only signed by Sir Richard Lloyd, but also by Sir Thomas Exton, who succeeded him as Dean of the Arches; by Dr. Pinfold, afterwards Advocate-General; and by Sir Richard Raines, afterwards Judge of the Prerogative Court and of the Court of Admiralty. Whether those additional signatures were on account of the great importance of the case, as I suppose, or whether it was usual to obtain the approbation of other members of the College of Advocates at that time, I do not know.

I much regret that this sentence was not discovered in time to be brought to the notice of Sir Henry Keating. It is certainly entitled to the greatest respect at my hands, and must be considered as an important precedent with reference to the case before me, from which it is only distinguishable by the facts—(1.) that the images appear to have been painted and not sculptured; (2.) and to have been single detached figures, and not, as in the case before me, part of an historical scene, or, as the Homily terms it, "the process of a story."

## VI.

Lastly, I come to Mr. Phillpotts' final argument as to the discretion which ought to be exercised. I agree with him, that as to questions of this kind the Ecclesiastical Court has a discretion to exercise. Ornaments and structures which it may be proper, all the circumstances considered, to allow in some cases, it may be improper to allow in others. Much of the decoration of a cathedral may be unsuitable in a parish church. I am urged to exercise this judicial discretion adversely to the erection of the reredos in this case, on the ground of the tendency to adopt the usages of Rome, said to be now prevalent, and on the ground that this structure is an approach to such uses. If there be such a tendency I deeply lament it, but I doubt whether the tendency is to be counteracted in the way proposed. I think there is great danger of doing unintentionally the work of the Church of Rome by denying to the Church of England the innocent aid which the arts of painting and sculpture, within due limits, minister to religion. If the use of all



things abused by Rome were taken from our Church, she would be very bare. "It must be confessed," says our 30th Canon, "that in process of time the sign of the Cross was greatly abused in the Church of Rome, especially after that corruption of Popery had once possessed it; but the abuse of a thing does not take away the use of it."

"But concerning those our ceremonies," says Hooker, "which they reckon for most Popish, they are not able to avouch that any of them was otherwise instituted than unto good, yea, so used at the first. It followeth, then, that they all are such as having served to good purpose, were afterwards converted into the contrary. And sith it is not so much as objected against us, that we retain together with them the evil wherewith they have been infected in the Church of Rome, I would demand who they are whom we scandalize, by using harmless things unto that good end to which they were first instituted."<sup>1</sup>

The very learned and pious Dr. Donne says:—"God, we see, was the first that made images, and he was the first that forbade them. He made them for imitation; He forbade in danger of adoration. For—*qualis dementiæ est id colere, quod melius est*—what a drowsiness, what a laziness, what a cowardliness of the soul is it, to worship that which does but represent a better thing than itself. Worship belongs to the best. Know thou thy distance and thy period, how far to go and where to stop. Dishonour not God by an image in worshipping it, and yet benefit thyself in following it. There is no more danger out of a picture than out of a history, if thou intend no more in either than example."—(*Works*, vol. v. p. 250, ed. 1839, Sermon cx.)

Archbishop Tenison, before his promotion to Canterbury, wrote a treatise on Idolatry, in which he says:—

"But for the images or pictures of the saints in their former estate on earth; if they be made with discretion; if they be the representations of such whose saintship no wise man calleth into question; if they be designed as their honourable memorials, they who are wise to sobriety do make use of them; and they are permitted in *Geneva* itself where remain in the quire of the Church of St. Peter, the pictures of the twelve prophets one side, and on the other those of the twelve apostles, all in wood; also the pictures of the Virgin and St. Peter in one of the windows. And we give to such pictures that negative honour which they are worthy of. We value them beyond any *images* besides that of Christ: we help our memories by them; we forbear all signs of contempt towards them. But worship them we do not, so much as with external positive signs: for if

<sup>1</sup> *Hooker's Works*, Book iv. ch. xii. 5, vol. i. p. 380. Ed. 1825.

we uncover the head,<sup>1</sup> we do it not to them, but at them, to the honour of God who hath made them so great instruments in the Christian Church; and to the subordinate praise of the saints themselves.”—(*Archbishop Tenison on Idolatry*, chap. xii. pt. 2, p. 297.)

Archbishop Wake, in that part of his answer to the Bishop of Meaux which is called “An answer to the fourth article of Images and Reliques,” section 1, “Of the Benefit of Pictures and Images” (*Gibson’s Preservative against Popery*, vol. iii. tit. ix. p. 217), observes:—

“(3.) Were the *benefit* of *images* never so great, yet you know this is neither that which we dispute with you, nor for which they are set up in your churches. Your Trent Synod expressly defines that *due veneration* is to be paid to them. Your catechism says that they are to be had not only for *instruction* but for *worship*. And this is the *point in controversy* betwixt us. We retain *pictures*, and sometimes even *images* too in our churches for *ornament*, and (if there be such uses to be made of them) for all the other *benefits* you have now been mentioning. Only we deny that any *service* is to be paid to them; or any *solemn prayers* to be made at their *consecration*, for any *divine virtues*, or indeed for any virtues at all, to proceed from them.”

Lastly, Dean Milman has some observations on this modern use of sculpture and painting in churches, which appear to me wise and pertinent. (Milman, *History of Latin Christianity*, vol. ii. p. 152.) . . . “So in general,” he remarks, “the ruder the art the more intense the superstition. The perfection of the fine arts leads rather to diminish than to promote such superstition. Not merely does the cultivation of mind required for their higher execution, as well as the admiration of them, imply an advanced state, but the idealism, which is their crowning excellence, in some degree unrealises them and creates a different and more exalted feeling. There is more direct idolatry paid to the rough and ill-shapen image, or the flat unrelieved and staring picture,—the former actually clothed in gaudy and tinsel ornaments, the latter with the crown of gold leaf on the head, and real or artificial flowers in the hand,—than to the noblest ideal statue, or the Holy Family, with all the magic of light and shade. They are not the fine paintings which work miracles, but the coarse and smoke-darkened boards, on which the dim outline of form is hardly to be traced. Thus it may be said, that it was the superstition which required the images, rather than the images which formed the superstition.”

<sup>1</sup> *Vide ante*, p. 16, note, Council of Trent, “caput aperimus.”

I do not think that in the Cathedral of Exeter the reredos put up by the Dean and Chapter can be justly said, to borrow the words of our 30th Canon, "to endamage the Church of God, nor offend the minds of sober men," any more than the painting of the Crucifixion on the boss in the roof of the same cathedral directly over the choir, which appears in the drawings submitted to me, and which is, in truth, obnoxious to almost all the objections made against the reredos, though its removal has not yet been sought.

The prayer of the appellants is, that they may be dismissed from all further observance of justice in this case, and that the respondent may be condemned in costs.

It follows from what I have said that I would grant the first part of this prayer: as to the latter I hesitate.

Mr. Phillpotts, in the opening of his speech, pointed out to me that the petitioner, the chancellor of the diocese, had in a recent case ordered a reredos with certain figures to be removed from Lynton Church, and that in his capacity as a prebendary he felt it his duty to try the question of the lawfulness of such a structure in the cathedral, in order that there might not be allowed there what he had disallowed in a parish church: there ought to be the same law he thought for both. I am too imperfectly acquainted with that case to offer any opinion upon it; it may have been rightly decided with reference to the discretion of the ordinary to grant or withhold a faculty for such a structure in a parish church, but I think the case affords a reason why the chancellor of the diocese might desire that the cause should be tried.

I should be glad to think that peace was about to be restored to this cathedral, and that the golden ecclesiastical maxim, which the learned Waterland prefixes to one of his best works, was about to prevail: "*In necessariis unitas; in non necessariis libertas; in omnibus prudentia et charitas.*"<sup>1</sup> I hope that the prayer for costs will be withdrawn.

<sup>1</sup> *Doctrine of the Holy Trinity.* London, 1734.

THE OFFICE OF THE JUDGE PROMOTED BY  
MARTIN v. MACKONOCHIE.

SECOND SUIT.

*It is unlawful to use lighted candles on the Holy Table during morning service.*

*It is lawful for the minister to cross himself during the Service.*

*Certain ceremonies already condemned in the case of Elphinstone v. Purchas<sup>1</sup> again pronounced unlawful.*

*The decision of the Privy Council in Hebbert v. Purchas followed, but not approved.*

IN this case I gave judgment on the 7th of December 1874. An appeal was asserted by the defendant, but was abandoned.

The case is reported in the Law Reports, 4 Admiralty and Ecclesiastical, page 279.

JUDGMENT.—The seventh, eighth, and ninth articles of charge against Mr. Mackonochie relate to the use of certain vestments or ornaments of the minister, the position of the celebrant before the holy table, and the use of wafer-bread in the administration of the Holy Eucharist.

On former occasions this Court has upon these subjects pronounced judgment favourable to the defendant. The Judicial Committee of the Privy Council has overruled the judgments.

In this state of things an application is now made to me by the counsel of the defendant to hear an argument which has for its object to show that the decisions of this Court were right, and those of the Appellate Court were wrong. The application is admitted to be unusual, but is said not to be unprecedented,

<sup>1</sup> *Supra*, p. 158.

and various cases were referred to in support of this proposition. It was urged upon the Court with considerable force that the present case came within the principle of these precedents for several reasons,—among others, that the judgments of the Appellate Court were delivered on the hearing of an *ex parte* case, and therefore have not the weight of judicial precedent; that the judgments of the Appellate Court upon the questions now before me have been conflicting and irreconcilable; that they can be shown to be founded on mistakes of fact as well as of law.

"In these peculiar circumstances it would be competent, I think, to this Court to allow these questions to be re-argued before it, more especially as it appears to me that the judgment of the Appellate Court in *Hebbert v. Purchas*<sup>1</sup> as to the ornaments of the minister is irreconcilable with the former judgment of the same tribunal in *Westerton v. Liddell*,<sup>2</sup> and with respect to the position of the minister, irreconcilable with the former judgment in *Martin v. Mackonochie*,<sup>3</sup> and because, with respect to the use of wafer-bread, I think it probable that if their Lordships had not been deprived of the usual assistance of counsel, they would have arrived at a different conclusion.

It does not require a long experience in the discharge of judicial duties to be aware of the very great disadvantage under which a Court labours when it is compelled to decide a case, and especially a very important case, upon an *ex parte* argument. In these circumstances, I think that it would be competent for me to hear now a re-argument of these points. But, upon reflection, I am satisfied that such a course would, on the whole, be inexpedient, and would not further the ends of justice. All these points may be re-argued before the Privy Council, and if there has been any miscarriage of justice in the former decisions of that tribunal, it is fully competent to it to rectify its errors without the intervention of another judgment on the same subjects from this Court. I think it more consistent with the usual practice of Courts, and far more proper, that the argument which it is sought to address to this Court should be addressed to the Judicial Committee of the Privy Council. I therefore decline to hear it.

JUDGMENT.—In this case the office of the Judge is, by virtue of letters of request from the Lord Bishop of London, promoted

<sup>1</sup> Law Rep. 3, P. C. 605.

<sup>2</sup> Moore's Special Report.

<sup>3</sup> Law Rep. 2, P. C. 365.

by Mr. Martin, of 2 New Square, Lincoln's Inn, against Mr. Mackonochie, the incumbent of St. Alban's, Holborn, in the diocese of London. The charges contained in these articles were perspicuously and properly arranged by the counsel for the defendant under the following heads:—(1.) Acts done by Mr. Mackonochie, as to the lawfulness of which no judicial decision has yet been pronounced. (2.) Acts done by Mr. Mackonochie, as to the lawfulness of which this Court has pronounced judgment in the case of *Elphinstone v. Purchas* [L. R. 3, A and E. 66]. (3.) Acts done by Mr. Mackonochie, as to the lawfulness of which the Judicial Committee have given judgment in *Hebbert v. Purchas* [L. R. 3, P. C. 605].

Article IV. charges: "That on Christmas Day, in the year 1873, and on Sunday, March 15th, and Sunday, April 5th, both in the year 1874, the defendant used lighted candles on the communion table, or on a ledge immediately above the same, during the performance of Morning Prayer, and as connected therewith, at times when such lighted candles were not wanted for the purpose of giving light; and also, in his said church, on Christmas Day, 1873, Sunday, December 28th, 1873, and Sunday, April 5th, 1874, caused lighted candles to be carried about, or lifted up, by attendants when not needed to give light, in and immediately before the commencement of the Communion service, and as connected with that service." The defence set up for this practice was, that these lights were not part of any ceremony, and were symbolical of nothing, but merely a permissible decoration, "an inexpressive act," it was said, constituting no ecclesiastical offence. I am unable to justify the legality of their use on this ground. They seem to me to fall within the general principle, either of ceremonies additional to those ordered by the Book of Common Prayer, or of ornaments not ordered, and not subsidiary to those that are ordered. I must pronounce this practice illegal, and this article proved.

Article VI. charges: "That on Christmas Day, 1873, and on Sunday, 15th March, and Sunday, 5th April, both in the year 1874, when the defendant was officiating as the principal minister or celebrant in the office for the administration of the Holy Communion, he (the defendant) elevated the paten or bread, or wafer, and also the cup that had been respectively placed on the holy table for the Holy Communion, in an unauthorised manner, and in a much greater degree than was necessary for the purpose of complying with any of the rubrics or requirements of the Book of Common Prayer and of the Communion service." Two witnesses were examined on this article by the prosecutor; Mr. Tod, the managing clerk of a solicitor (not a parishioner), but employed to watch the per-

formance of Divine service by Mr. Mackonochie, and to report thereupon. He deposed to an elevation of the elements, which would bring the act of Mr. Mackonochie within the letter of the judgment of the Judicial Committee of the Privy Council in *Martin v. Mackonochie* [L. R. 2, P. C. 365]. On the other hand, Mr. Layman, who had been churchwarden of the parish, who constantly attended Divine service, and who was in church on the occasion as to which Mr. Tod had spoken, and who paid especial attention to the acts of Mr. Mackonochie in this matter, and had from his position a better opportunity of observing him than Mr. Tod, gave a material contradiction to his evidence; while it is to be observed that Mr. Proctor, the other witness produced by the prosecutor, was not examined on this point. Upon the whole, I am of opinion that the criminal charge laid in this article is not substantiated by adequate evidence, and I pronounce that it is not proved.

Article V. charges: "That on Christmas Day and on Sunday, December 28th, both in the year 1873, and on Sunday, April 5th, 1874, after the conclusion of Morning Prayer, and immediately before commencing the Communion service, and as connected with such service, and in the presence of the congregation then assembled for such service, he (the defendant) formed, or caused to be formed, and himself accompanied, processions of clergy and others, singing hymns and marching up and down the aisles or round the interior of the church with lighted candles, a crucifix borne upon a pole, and banners (one of such banners bearing a device of a lady standing in a crescent, and representing the Virgin Mary), and that he himself on the said occasions then and there wore an alb and cope, with a biretta on his head; and at the conclusion of the procession assumed a chasuble instead of the cope, and immediately and without any break or intermission commenced the Communion service." The wearing of the biretta was not illegal; but it was properly admitted by the counsel for the defendant that the whole ceremony, as laid in the article and proved by the evidence, had been pronounced by me in Mr. Purchas' case to be illegal. I retain the opinion which I then expressed, and pronounce this article proved.

Article X. charges: "That on Christmas Day, in the year 1873, and on Sunday, 15th March, and on Sunday 5th April, both in the year 1874, he, the defendant, during the performance of the service for the administration of the Holy Communion, caused to be said or sung, immediately after the Prayer of Consecration, and before or during the reception of the Elements by the communicants, the words, or hymn, or prayer, commonly known as the 'Agnus,' that is to say, 'O Lamb of God; that

takest away the sins of the world, have mercy on us.'” The evidence proves that this hymn was sung after the consecration of the Elements, but not during the reception of them by the communicants. It was contended on behalf of Mr. Mackonochie, that the singing of this hymn might be put upon the same footing as the ordinary singing of a hymn before or after the sermon, or the singing the *Gloria* before reading the Gospel. But looking to the history of the Prayer-Book, and to the fact that this hymn is appointed to be said or sung in a later part of the Holy Communion service, I am not of this opinion, nor do I see any reason to alter the decision upon this subject which I have already delivered in *Elphinstone v. Purchas* [L. R. 3, A. and E. p. 66], within the principle and almost within the very letter of which this Act is brought. I pronounce this article to be proved.

Article XI. charges: “That the defendant on Christmas Day 1873, and on Sunday, 15th March, and on Sunday, 5th April, both in the year 1874, when officiating in the performance of Divine service, and of the service for the administration of the Communion (and not of the office of Baptism) made the sign of the cross by the appropriate gesture of his hand for that purpose;” and Article XII. charges: “That the defendant, on Sunday, 28th December 1873, and on Sunday, 15th March, and on Sunday, 5th April, both in the year 1874, when officiating in the performance of Divine service, and of the Communion service, kissed the Prayer-Book or Service-Book.” It was properly admitted by the counsel for Mr. Mackonochie, that upon the subject of these two charges generally, I had given judgment in the case of *Elphinstone v. Purchas*, pronouncing the kissing the book, and the making the sign of the cross to the congregation, to be illegal. The evidence upon the 11th article went beyond this, and further proved that Mr. Mackonochie, during the performance of Divine service, crossed himself. I have considerable doubt whether this charge is specifically laid in the articles. The counsel for the defendant, however, did not take this objection; but contended there was an essential difference between making the sign of the cross in the air, admitted to be illegal, and the crossing of himself by the minister, not yet pronounced to be illegal. This latter act was said not to be illegal, as not being any part of the service performed by the minister, as minister, but an act done by him in his individual capacity as one of the congregation; and it was likened to the act of bowing at the name of our Lord, and turning to the east during the recital of the Creed or before the Doxology, innocent and edifying practices, it was said, introduced by custom in the services prescribed by the Book of



Common Prayer. The adverse contention seems to be that the officiating minister is not allowed to divest himself, during the whole time of performing Divine service, of his ministerial character; and, therefore, that an act which it would be competent to him as a member of the congregation to perform, is not permitted to him while officiating as minister. This proposition seems to me too wide. The more limited proposition would be, that it is not competent to him to do any act of private devotion which either conflicts with a direct order of the rubric, or which introduces a new rite or ceremony to the congregation. Upon the former principle, the Privy Council found Mr. Mackonochie guilty of "excessive kneeling" when the Rubric ordered him to adopt the posture of standing: upon the latter principle, I admonished Mr. Purchas not to make the sign of the cross in the air to the congregation. But the minister's crossing himself as a matter of private devotion, does not seem to me to fall under either of these categories, but rather to be of the same character as covering the face with the hands during prayer, or crossing the hands over the breast, or spreading them out, or lifting them up, which could not, I think, reasonably be contended to be an ecclesiastical offence. Any interference with the liberty of private devotion is beset with difficulties, while public ministrations easily admit of public order respecting them. I am of opinion that the legal offence is proved so far only as making the sign of the cross to the congregation is concerned.

Article IX. charges: "That the defendant, on Christmas Day 1873, and on Sunday, 15th March, and on Sunday, 5th April, both in the year 1874, in the celebration of the Holy Communion, and in the administration thereof to the communicants, used wafer bread or wafers (being bread or flour made in the form of circular wafers), instead of bread such as is usual to be eaten." Article VII. charges: "That the defendant in his said church, on divers days and times—to wit, on Christmas Day 1873, and on Sunday, March 15th, and on Sunday, April 5th, both in the year 1874, when officiating in the Communion service, wore the following vestments or things—namely, an alb, a cope, a chasuble, an amice, a maniple, a stole, and a girdle. Article VIII. charges: "That the defendant, in his said church, on Christmas Day, and also on Sunday, December 28th, both in the year 1873, and on Sunday, 15th March, and on Sunday, 5th April, both in the year 1874, when officiating as the principal minister or celebrant in the service for the administration of the Holy Communion, stood, while reading the Prayer of Consecration in the said service, at the west side of the holy table in such wise that he

then stood between the congregation and the holy table with his back to the people." The evidence produced by the prosecutor proved, though not very distinctly, the use of the wafer bread, the position of the minister at the holy table, and the wearing of the vestments; it is also proved that these vestments were those in use in the second year of King Edward the Sixth's reign. I have already, during the course of this trial, given my reasons for refusing to hear an argument from the counsel for the defendant as to the lawfulness of this position, the use of this bread, and the wearing of these vestments. To those reasons I now, without recapitulating them, refer. They must be taken as part of my judgment. I pronounce that the charges laid in these articles are proved.

These articles of charge, with the exception of the sixth, which relates to undue elevation of the Elements, being proved, it remains to consider what sentence of canonical punishment the Court should pass. I do not desire to conceal that this question has given the Court considerable anxiety. On the one hand, Mr. Mackonochie is admitted to have disobeyed the sentences both of the Privy Council and of this Court, and is also proved to have contravened the general law with respect to a matter decided for the first time by this judgment. On the other hand, the matters charged relate to no moral or doctrinal offence, but to an excess of ritual observance beyond that ritual observance which the Prayer-Book and Formularies of the Church prescribe. This prosecution is brought, through the permission of the Bishop of London, by a non-parishioner, who, in a few months' time, when the Public Worship Act shall have come into operation, will be, on the ground of his being a non-parishioner, disqualified to be a prosecutor. The articles do not contain the averments familiar to the Court in these criminal suits, viz., that the parishioners have been offended, or the services of the Church unattended in consequence of the conduct of the incumbent, nor has any evidence been given by any parishioner to this effect. The law with respect to some of the matters charged is in an uncertain state; and with respect to the charges contained in the articles proved in this suit, Mr. Mackonochie does not appear to have been already the subject of a personal admonition either from the sentence of a Court or from his Diocesan.

Nevertheless, Mr. Mackonochie must obey the law. He must recognise some authority superior to his own. He cannot make the law for himself, nor out of the existing law select what portions he will obey and what disobey. Upon the whole, I am of opinion that I must pass a sentence upon him of suspension, *ab officio*, for six weeks, and I must condemn him

in all the costs of the suit, except those incident to the charge of undue elevation, which I have pronounced not to be proved. It is my duty also to admonish Mr. Mackonochie to desist from the practices mentioned in the articles proved, and to warn him that contumacious disobedience to this sentence may entail upon him, according to the Ecclesiastical Law, one of far greater severity. The sentence will be published in the usual manner and form, and take effect from Sunday next.

THE OFFICE OF THE JUDGE PROMOTED BY  
JENKINS v. COOK.

*An incumbent having primâ facie ground for believing that one of his parishioners is not qualified to receive the Holy Communion, submits the question to his Ordinary, and either receives no direction from his Ordinary, or is directed to refuse to administer to him the Holy Communion. Such incumbent is not guilty of an ecclesiastical offence in refusing to administer to him the Holy Communion.*

*A layman who persistently denied the Existence of the Devil and the Doctrine of Eternal Punishment in any shape, and who maintains that large portions of the Bible are of an indecent and irreligious tendency, may be refused the Holy Communion by his parish priest.*

I GAVE judgment in this case on the 16th of July 1875. An appeal has been asserted, and is still pending. The case is not yet reported.

JUDGMENT.—I retain the opinion which I expressed on accepting the letters of request in this case, namely, that it was one especially proper for the cognizance of the Bishop of the diocese; and I regret that, in his Lordship's opinion, circumstances had rendered it unfit that he should exercise his episcopal jurisdiction in this matter. It is my duty, however, to deal with the subject thus presented to me according to the best of my ability without the great advantage of the Bishop's judgment thereupon.

The history of the proceedings taken in the case, so far as it is necessary to state them, is as follows:—

Upon the 18th of November 1874 the Bishop of Gloucester and Bristol issued a commission under the 3 and 4 Vict. c. 86,

to inquire into and report upon a charge preferred by Mr. Henry Jenkins, a parishioner of the parish of Christ's Church, Clifton, against the Rev. Flavel Smith Cook, a clerk in holy orders, in the diocese of Gloucester and Bristol, and vicar of his parish, for illegally and without any just cause or reason, and contrary to his duty in that behalf, refusing when he was officiating minister to administer the sacrament of the Holy Communion to Mr. Jenkins.

The Commission was duly holden, and after the examination of a witness, and after hearing counsel on both sides, reported that the majority of them considered that there was sufficient *prima facie* ground for instituting further proceedings against Mr. Cook.

Subsequently Mr. Jenkins obtained the permission of the Bishop to promote his office by letters of request to the Court of Arches.

On the 19th of February 1875 articles were filed against Mr. Cook.

They charge that the promoter, being a parishioner of the defendant's parish, a member of the Church of England, and having during the last six years regularly attended Divine service on Sundays at his parish church, having been in the habit of receiving the Holy Communion in his church monthly, having always conducted himself reverently in church, joining in the responses in accordance with the directions of the rubric, believing in the inspiration of the canonical books of the Old and New Testament, that Scripture contained all things necessary for salvation, and in the doctrine of the atonement of the sins of mankind by the death of our Lord on the Cross, and having published and using a certain volume of family prayers, which is annexed, was, on Sunday the 4th of October 1874, after having given the legal notice, and having duly presented himself to receive the Holy Communion, refused the Communion by the defendant.

The defendant put in a responsive plea, the substance of which will be stated hereafter, and there was an allegation in reply.

The case came on for hearing before me on the 22d and 24th of June, and I took time to consider the judgment which I am now about to deliver.

The contention of the promoter is, that being a parishioner, and having given due notice of his intention to be a communicant on the following Sunday, he did so present himself, and was repelled by the defendant. I thought that when these facts were proved the burden of proof was shifted, and that it was for the defendant to show that he had adequate reasons for this

repulsion. The defendant undertook to discharge this burthen by proving that the promoter had published a work called *Selections from the Old and New Testament*, and had written letters to show that he made these selections more especially because he did not believe in the eternity of punishment, or, indeed, as it would appear from the passages omitted, in the punishment of sin at all, or in the existence or personality of the devil, or in other matters of importance.

It was admitted, properly, in my opinion, that the publishing a volume of extracts from the Old and New Testament without preface or comment, and with asterisks denoting where passages were omitted, was not *per se* an offence which warranted the refusal of the Holy Communion to the author of the work. The letters, however, gave a different colour to the matter, showing *quo animo* the omissions were made, and being tantamount to a denial of the doctrine and the truth of the facts contained in the omitted passages.

The correspondence put in evidence comprises letters between the defendant and the promoter, between the defendant and the Bishop, between the promoter and the Bishop, and between the solicitors of the parties.

The defendant takes up in substance two grounds of defence :—

First, That whether the reasons alleged to him were valid or invalid, he is not, having regard to his conduct and the particular law on the subject, a criminous clerk subject to the provisions of the Clergy Discipline Act.

Secondly, That his reasons for refusal were legally and morally valid, and that therefore he has committed no offence against the law ecclesiastical.

The two lines of defence perhaps sometimes cross one another, but on the whole they are sufficiently distinct. I proceed to consider them in their order.

With reference to the first line of defence, it becomes necessary to enter a little into the history of the present case.

It appears that in the year 1865 the promoter published a volume entitled *Selections from the Old and New Testament*. This volume he presented to the defendant, who seems never to have examined it until after the 6th of July 1874. On the Sunday before that day the defendant had preached a sermon in his parish church, and on the next day he received the following letter from the promoter :—

“ 3 Vyvyan Terrace, Clifton, 6 July 1874.

“ MY DEAR SIR,—As one of your parishioners who accepts his conscience as the voice of God speaking within him, I beg

to protest most emphatically against the irreligious tendency of your sermon of last night. I quite believe that you would not willingly deceive others, but it is my opinion that no difficulties as to language or books should stifle what is imprinted in every man's breast by his Maker, that is to say, the knowledge of right and wrong.—I am, my dear Sir, yours very sincerely,

HENRY JENKINS."

I learn from subsequent correspondence, that this letter was caused by the defendant having maintained the doctrine of eternal punishment, which the promoter characterises in subsequent letters addressed to the Bishop as an "irreligious," "disgusting," and "impious" doctrine.

It appears that the defendant, who had then for the first time examined the book sent by the promoter, and discovered that many important parts of the Holy Scripture were omitted in it, called upon the promoter with the object of enlightening and rebuking him, both as to his letter and book; but he refused to hear any communication on the subject. His wife, however, who has been examined as a witness, called upon the defendant and endeavoured unsuccessfully to persuade him that her husband was justified in his conduct.

On the 20th of July the promoter again wrote to the defendant. The letter was as follows:—

"3 Vyvyan Terrace, Clifton, 20 July 1874.

"MY DEAR SIR,—Mrs. Jenkins has kindly called upon you, in order to arrange matters, with, I am afraid, very poor success. With regard to my book, *Selections from the Old and New Testament*, the parts I have omitted, and which has enabled me to use the book morning and evening in my family, are, in their present generally received sense, quite incompatible with religion or decency (in my opinion). How such ideas have become connected with a book containing everything that is necessary for a man to know, I really cannot say, and can only sincerely regret it.—I am, my dear Sir, yours very sincerely,

HENRY JENKINS."

"The Rev. Flavel Cook,

"19 Vyvyan Terrace, Clifton."

It is very important to observe the language of this letter, because it contains a declaration that the passages omitted are so omitted on the ground that, as generally understood, they are incompatible with religion or decency. During the hearing I urged more than once upon the counsel for both parties the propriety of the following arrangement, viz., that the promoter

should withdraw the letter, and the defendant thereupon should admit him to the Lord's Table. The defendant expressed himself as being willing and ready to adopt my suggestion; but I regret to say that after deliberation the promoter refused to withdraw the letter, and hence the continuance of this suit.

I believe that, of the Old Testament, 215 chapters are omitted altogether, and 25 of the New Testament; and there are besides numerous omissions of portions of chapters.

I will take, for example, the Gospel of St. Matthew. In that Gospel the omissions are as follows:—

Whole of first chapter, including birth of our Lord.

Chapter III. Several verses of St. John the Baptist's preaching.

Chapter IV. Fasting and temptation of our Lord.

Chapter V. Passages relating to the crime of killing and anger towards and abuse of a brother, and the commission of adultery.

Chapter VII. Passages relating to entering in at the strait gate, and as to trees not bringing forth good fruit being hewn down, and the condemnation of those who have worked iniquity, though they have prophesied and cast out devils.

In Chapter VIII. are omitted the passages relating to the expulsion of devils; that relating to those who are to be, and those who are not to be, admitted into heaven; and our Lord's refusal to allow the burial of a father to excuse a disciple from following him.

Chapter IX. The passages relating to the expulsion of devils.

Chapter X. Passages exhorting men not to fear those who can only kill the body, but not the soul; and the passage, in which our Lord says that he is come to send a sword, not peace upon earth.

In fact, of the 28 chapters of St. Matthew, only five, I think (2, 6, 14, 27, 28), have escaped mutilation by the omission of important passages, besides those relating to the eternity of punishment, and the personality of the devil.

I return to the correspondence. The next letter is as follows:—

“ 19 Vyryan Terrace, Clifton, 24 July 1874.

“ DEAR SIR,—It would be a great relief to me if I could find in your letter of 20th instant, or in any other communication written or spoken, something to show that I have misunderstood your opinions, or that you have changed them for the better.

“ Unhappily, the conclusion I cannot but form from your letters, words, and printed *Selections from the Old and New Testaments*, is that, of set purpose, you reject very many portions



of Holy Scripture. That you have, for instance, cut out as you have from the Bible what is therein written concerning Satan and evil spirits, is to me terrible evidence of how far you have allowed yourself to go in mutilating the Word of God.

"Large differences of opinion concerning scriptural matters no prudent or charitable minister of the Gospel would condemn, but there are perversions and denials which no faithful minister will sanction, lest he allow unbelief a recognised place in the Church of Christ. With such perversions and denials I grieve to say I am driven to connect yourself. While they remain not retracted or disavowed, you cannot be received at the Lord's Table in my church. I hope you will feel that my course is directed by conscience, and not by resentment. I quite forgive your behaviour when I called, and, although you would then listen to nothing, if you will converse quietly with me, my time shall willingly be given for that purpose.

"May the Spirit of Truth deliver you from the errors you have adopted, and, in hope of seeing this my prayer answered, I remain, dear Sir, yours faithfully, FLAVEL COOK.

"Henry Jenkins, Esq."

The answer to this is as follows :—

"3 Vyryan Terrace, Clifton, 25 July 1874.

"MY DEAR SIR,—Thinking as you do, I do not see what other course you could consistently have taken. I shall, nevertheless, come to the Lord's Table as usual at 'your' church, which is also mine.—I am, my dear Sir, yours very sincerely,

"The Rev. Flavel Cook.

HENRY JENKINS."

The next letter is from the defendant to his Bishop :—

"Edinburgh, 31 July 1874.

"MY LORD,—Supposing myself bound by rubric so to do, I write to inform your Lordship that on the 25th instant I warned one of my parishioners, Mr. Henry Jenkins, that he could not be received at the Lord's Table in my church while certain opinions held by him remain not retracted or disavowed.

"By word and in writing, also in print, he had committed himself to very serious opposition to the Word of God. I may specify the rejection of belief in the existence of Satan and evil spirits. He acknowledged, in reply to my warning of refusal to admit him to the Lord's Table, that he thought I could take no other course, yet appears to signify that he purposes to disregard my action, and present himself as usual.

"If necessary, I will of course furnish particulars of the

matter.—I have the honour to remain, my Lord, your Lordship's obedient servant,  
 FLAVEL COOK.

"P.S.—Any letter addressed to my residence, Christ Church Vicarage, Clifton, will find me.

"The Right Reverend

"The Lord Bishop of Gloucester and Bristol."

To this letter the answer was as follows:—

*"The Palace, Gloucester, 2 August 1874.*

"MY DEAR SIR,—I hasten to acknowledge your note, dated Edinburgh, July 31.

"As you notify a fact, rather than ask advice about a contemplated course, I cannot obtrude what is not asked, but I may still properly intimate to you my serious doubt whether, under the circumstances specified, repulsion would be sustained by a court of law.

"Feeling the great importance of the matter I write at once, and am faithfully yours,

"CHARLES GLOUCESTER AND BRISTOL.

"Rev. F. Cook."

The next letter in order is from the promoter to the Bishop, which, I presume, was received after the Bishop had sent the last letter to the defendant:—

*"Vyvyan Terrace, Clifton, 2 August 1874.*

"MY LORD,—At morning service to-day, Mr. Cook, the Vicar of Christ Church, Clifton, has refused to administer the Holy Communion to me (through the medium of his curate). Now, as I am not an open and 'notorious evil liver,' and as I have not denied any article of the creed, perhaps you may think it desirable to ask him why he commits this scandal in the church, to say nothing of the particular outrage upon me. Some time ago Mr. Cook preached two sermons, with the special object of supporting the doctrine of eternal punishment. As a parishioner, I wrote to protest against the irreligious tendency of these sermons. In the course of the controversy, my disbelief in the devil was discovered; and also that, in my book, *Selections from the Old and New Testaments*, I had omitted those passages which seemed to favour those remarkable doctrines. I very much regret the necessity for omitting those passages, and should be delighted if some more wholesome meaning could be attached to them. I have thought it my duty to write this letter, but from what I have said, your Lordship will perceive that Mr. Cook very probably considers that, in treating me thus, he only carries out the principles of the Church of England to their

legitimate conclusion ; for I believe Mr. Cook's opinions, however extraordinary, are perfectly orthodox.—I am, my Lord, your Lordship's obedient servant, HENRY JENKINS."

The last sentence of this letter contains, I may observe, a remarkable admission. The Bishop sent the following answer :

*"Palace, Gloucester, 3 August 1874.*

"MY DEAR SIR,—I much regret the occurrence which you specify.

"The Church of England has not, I believe, anywhere laid down rules relative to refusal of the Holy Communion, other than those prefatory to the service, and the 26th, 27th, and 109th Canon.

"These, I gather from your letter, do not apply to your case.

"It might, I think, justly be inferred from the service itself, that a communicant should fully believe in the articles of the Nicene Creed.

"These, I conceive, you would be willing heartily to accept.

"If this be so, I think you have a reasonable cause of complaint ; but as the matter may come before me in my Court, I do not feel able at present to say more.

"I shall feel it my duty to attend to any further communication on this matter which you may desire to make.—Very faithfully yours, C. J. GLOUCESTER AND BRISTOL."

In this letter it will be observed no reference is made to the letter which the Bishop had received from the defendant, which had apprised the Bishop of the distinct grounds of his refusal, nor to the Bishop's opinion upon those grounds, nor is there any comment made upon the avowal of the promoter that he disbelieved in the existence of the devil and in the doctrine of eternal punishment.

The reply to this letter has not been produced before me. I think the Bishop said it had been lost. But it is clear that the promoter had not availed himself of the Bishop's suggestion that he should express his belief in the Nicene Creed, for the next letter was as follows :—

*"Palace, Gloucester, 13 August 1874.*

"MY DEAR SIR,—After careful correspondence and inquiry I find that Mr. Thomas" [that is, the curate of Mr. Cook] "refused you the Holy Communion, partly because notice was not given according to the rubric, but mainly because he regarded you to be a common and notorious depraver of the Book of Common Prayer, and of the Articles in certain special

details, which he was prepared, if need be, to specify in open court or otherwise.

"This being alleged to be the case, and it being also doubtful from your letter to me whether you accept the creed which forms a portion of the service, I do not feel that I can personally further interpose in the matter; but should you desire it, I shall be quite willing to entertain the question, if brought before me in my court.—Very faithfully yours,

"H. Jenkins, Esq.

C. J. GLOUCESTER AND BRISTOL."

This letter the promoter answers as follows:—

"13 *Manilla Crescent, Weston-super-Mare,*

"14 *August 1874.*

"MY LORD,—I have not alluded to the Nicene Creed except to say that I did not allude to it. The Apostles' Creed (the one placed over the Communion Table in Christ Church) I still think less involved and more in accordance, on the whole, with what we are told on the subject. I do not think it necessary to notice Mr. Thomas's objections, but the reason Mr. Cook refused me the Sacrament is very intelligible. In speaking to my wife he said, 'Let him tell me that he believes in the devil, and I will give him the Sacrament.' In his opinion, therefore, this is the passport to the ordinance. I beg to acknowledge the receipt of your letter, and am, my Lord, your Lordship's obedient servant,

HENRY JENKINS."

The next letter is from the Bishop, and is as follows:—

"*Gloucester, 15 August 1874.*

"MY DEAR SIR,—To prevent any mistake, allow me to add that I have only to do with the clergyman who actually refused you, and with the reasons which he assigned. These I took especial care to obtain in an accurate form, and they are as stated in my last letter.—Very faithfully yours,

"H. Jenkins, Esq.

C. J. GLOUCESTER AND BRISTOL."

The information to which the Bishop refers is contained in two letters of Mr. Thomas's, the curate, which were enclosed in a later letter, dated September 16, sent by the Bishop to the promoter.

The two following letters continue the correspondence between the promoter and the Bishop:—

"3 *Vyryan Terrace, Clifton,*  
6 *September 1874.*

"MY LORD,—Mr. Thomas has this morning again refused to give me the Sacrament. Now, whatever a 'common and

notorious depraver of the Book of Common Prayer' may mean as applied to a man who values the book only second to the Bible itself, the reason why I am debarred from partaking of the Holy Communion is sufficiently 'notorious.' It is because, forsooth, I ventured to protest against the disgusting and impious doctrines set forth by Mr. Cook in the two sermons to which I have referred. My Lord, it is a grievous misfortune if your power will not indeed allow you to check such unjustifiable and scandalous proceedings on the part of your subordinates.—I am, my Lord, your Lordship's obedient servant,

"HENRY JENKINS."

"Gloucester, 14 September 1874.

"MY DEAR SIR,—I have just returned after a short absence on the Continent. Hence the delay in reply.

"I have, as I implied, either in a former letter, or through Canon Mather, this grave difficulty, viz., that I do not yet clearly understand whether you do or do not heartily and *ex animo* accept the creed which forms a part of the Communion service.

"While that doubt remains I cannot conscientiously take any action.

"As I before said, I have been greatly pained by the whole matter.—Very faithfully yours,

"C. J. GLOUCESTER AND BRISTOL."

There then appears to have been a letter from the promoter to the Bishop, which was not produced before me.

The next letter I have is from the Bishop, as follows:—

"Gloucester, 16 September 1874.

"MY DEAR SIR,—Excuse my saying that you do not realise the difficulties of the case. Let me state them:—

"First, I have nothing to do with any one except the minister actually repelling.

"Secondly, I learn from him, after careful inquiry, the grounds on which he does so; viz., principally, 'that you were a common and notorious depraver of the Book of Common Prayer, and of the Articles in certain particulars which he was prepared to specify.' This I have already mentioned to you.

"Whether these statements can be legally sustained I am not prepared to say.

"Into this, however, I had resolved not to enter, but was prepared, if I found from your answers that you accepted the creed that forms a part of the Communion service, to direct, under the 27th Canon, that you should no longer be refused,

as being of honest life and conversation, and holding the fundamental articles of the Christian faith.

"Unfortunately, on the subject of your acceptance or non-acceptance of the creed which forms a part of the service, I do not obtain, and have not yet obtained, any such clear answer as would, in my judgment, warrant me in personally interposing and overriding the judgment of the clergyman; still I now, as previously, wish to do you all possible justice, and so add, as before, that I will entertain the question if formally brought before me in my court; the question being one of legal difficulty, whether you can be considered to come under the fair construction of the 27th Canon.

"As I wish, in so painful a matter, to act with the fullest consideration of your feelings, I enclose Mr. Thomas's letter, with the reasons *in extenso*. This please to return to me.

"I am also quite willing that you should go to my friend and legal adviser, Mr. Clarke, show to him this and my other letters, and be guided by his friendly advice.

"I think I must have made it plain throughout how deeply I regret the whole matter. Still I cannot and must not set aside the deliberate and reasoned judgment of one of my clergy, unless it be made more clear than it now is to me that I am morally justified in doing so.—Very respectfully yours,

"C. J. GLOUCESTER AND BRISTOL."

Mr. Thomas's letters, which are part of the evidence in the suit, were enclosed in the last letter.

In answer to the letter of the 16th of September from the Bishop to the promoter, the promoter appears to have written another letter which was not produced, and then I have the following letter from the Bishop to the promoter:—

"*Gloucester, 18 September 1874.*

"MY DEAR SIR,—I return the note you have kindly sent.

"I venture to hope that my last note may have put matters in a clear light. Mr. Cook's case will be, that you, by omissions, the *design of which you have admitted orally and in writing*, have come under the 27th Canon.

"Personally, I doubt much whether this would be the ruling of any competent court; but, in my official capacity, especially under the circumstances I have already mentioned in a former note, I ought not to foreclose a fairly arguable case.—Very faithfully yours,

C. J. GLOUCESTER AND BRISTOL."

It appears that on the 2d of October 1874 the defendant had an interview with the Bishop upon the subject of his intended refusal of the Holy Communion to the promoter on Sunday the

4th of October, notice having been given on the 28th of September by the promoter, according to the rubric, of his intention to communicate on the 4th of October.

As to this interview the Bishop himself gave evidence in court, and connected with it there is a document written in pencil by him to which I will presently advert.

His Lordship said that he had no memoranda of the details of the conversation, which had faded from his memory, and which he had completely forgotten. He said that to the best of his remembrance he did not give the defendant advice but assistance: that his general impression was that the defendant said he was conscientiously bound to continue to refuse the Holy Communion to the promoter, and that he did not "collect categorically that Mr. Cook (the defendant) would obey his judgment."

But upon cross-examination a document in pencil was shown to his Lordship, which he admitted both to be in his handwriting and to have been given by him to the defendant as the answer which he would advise him to send to the promoter.

This document is as follows:—

"I have received your note giving me, etc.

"I fear it is my solemn duty now to inform you that I cannot receive you as a communicant, inasmuch as you have published a book omitting certain portions of God's Holy Word, and have given me in writing your reasons for doing so.

"This I solemnly believe to constitute the offence specified in the 27th Canon, and believing it, I am conscientiously bound to obey that Canon.

"My course, therefore, is clear, and I shall unhesitatingly follow it.

"I do, however, feel how grievous the scandal may be for such a case to come on; it must come before the courts of the country, and I do invite you to consider whether it may not be your duty so to respect the consciences of others, and the general peace of the Church, as voluntarily to withdraw from my congregation, and not to put me to the melancholy and painful necessity of acting as I am resolved to act if you present yourself."

This memorandum, the Bishop said in his evidence, was written by him to assist the defendant in the expression of his (the defendant's) opinion. It was adopted by the defendant as his own, and sent with additional remarks by him to the promoter.

Another letter, which I thought myself bound to admit, though marked "private," is as follows. It is dated, it will be observed, after the repelling of the promoter, an event which

occurred on Sunday, October the 4th, two days after the interview of the defendant with the Bishop, and which repelling alone is made the subject of charge in the articles.

“(Private.)

“*Gloucester, 23 November 1874.*

“MY DEAR MR. COOK,—I have carefully thought over our short conversation, and think now that there seems to be some daylight for us all.

“But we must, of course, be very careful. It has occurred to me, therefore, that any part I may have had in drawing up the letter which you wrote to Mr. Jenkins, or even any approval of it, should carefully be suppressed. It will not legally aid your case, and it will make my interposition less effective. So, as much as you can, keep me out of it. I shall be more free, and more able to bring matters to a peaceful solution.—  
Very faithfully yours, C. J. GLOUCESTER AND BRISTOL.”

The only comment which I think it necessary to make upon these letters will be with reference to their bearing upon the point of law relied upon by the defendant, to which I will presently advert.

Such being the facts of the case, I will now endeavour to discover and apply the law which is applicable to them.

I think it unnecessary to enter upon a discussion of the principles of the general ecclesiastical law upon this particular subject, inasmuch as specific provisions of our Church are to be found in the Canons of 1603 and in the rubrics to the present Prayer-Book.

It has been argued, indeed, that the rubric alone is applicable to them. But I am not of that opinion.

As I have always been taught and learnt, the rubric is to be construed, wherever it is possible, so as to agree with the Canons. Many authorities might be cited for this proposition; but it really seems to me one of an elementary character. In this particular instance the rubric, as it will be seen, itself refers to the Canon.

And with respect to the other argument, that the Canons are not binding on the laity, after the decision of Lord Hardwicke in *Middleton v. Crofts* (2 Atk. Rep. 669), not to say that this proposition is too broadly stated and requires some qualification, it appears to me quite inapplicable to the present case, which is a proceeding against a clergyman in an ecclesiastical court for an offence against the ecclesiastical law.

In *Mastin v. Escott* (4 Moore, 104), which was referred to, but I think infelicitously, by the counsel for the promoter, the layman put in force against the clergyman the punishment



prescribed by the Canon alone for the offence; and here I may add that this case itself is one of the authorities for both propositions, namely, that the Canons are binding upon the clergy, and that the rubric is to be construed with reference to them.

The Canons to which I think it necessary to refer are the 26th and 27th.

*Canon 26.*—"No minister shall in any wise admit to the receiving of the Holy Communion any of his cure or flock which be openly known to live in sin notorious, without repentance; nor any one who have maliciously and openly contended with their neighbours, until they shall be reconciled; nor any churchwarden or sidemen, who having taken their oaths to present to their Ordinaries all such public offences as they are particularly charged to inquire of in their several parishes, shall (notwithstanding their said oaths, and that their faithful discharging of them is the chief means whereby public sins and offences may be reformed and punished) wittingly and willingly, desperately and irreligiously, incur the horrible crime of perjury, either in neglecting or in refusing to present such of the said enormities and public offences as they know themselves to be committed in their said parishes, or are notoriously offensive to the congregation there; although they may be urged by some of their neighbours, or by their minister, or by their Ordinary himself, to discharge their consciences by presenting of them, and not to incur so desperately the said horrible crime of perjury."

*Canon 27.*—"No minister, when he celebrateth the Communion, shall wittingly administer the same to any but such as kneel, under pain of suspension; nor, under the like pain, to any that refuse to be present at public prayers according to the orders of the Church of England; nor to any that are common and notorious depravers of the Book of Common Prayer and administration of the Sacraments, and of the orders, rites, and ceremonies therein prescribed, or of anything that is contained in any of the Articles agreed upon in the Convocation one thousand five hundred sixty and two, or of anything contained in the Book of ordering the Priests and Bishops; or to any that have spoken against and depraved His Majesty's sovereign authority in causes ecclesiastical; except every such person shall first acknowledge to the minister, before the churchwardens, his repentance for the same, and promise by word (if he cannot write) that he will do so no more; and except (if he can write) he shall first do the same under his handwriting, to be delivered to the minister, and by him to the Bishop of the diocese or Ordinary of the place. Provided that every minister so repelling any, as is specified either in

this or in the next precedent constitution, shall, upon complaint, or being required by the Ordinary, signify the cause thereof unto him, and therein obey his order and direction."

I now turn to the rubrics prefixed to "The Order of the Administration of the Lord's Supper or Holy Communion."

"So many as intend to be partakers of the Holy Communion shall signify their names to the curate, at least some time the day before.

"And if any of those be an open and notorious evil liver, or have done any wrong to his neighbours by word or deed, so that the congregation be thereby offended, the curate, having knowledge thereof, shall call him and advertise him, that in any wise he presume not to come to the Lord's Table until he hath openly declared himself to have truly repented and amended his former naughty life, that the congregation may thereby be satisfied, which before were offended; and that he hath recompensed the parties to whom he hath done wrong; or at least declare himself to be in full purpose so to do, as soon as he conveniently may.

"The same order shall the curate use with those betwixt whom he perceiveth malice and hatred to reign; not suffering them to be partakers of the Lord's Table, until he know them to be reconciled. And if one of the parties so at variance be content to forgive from the bottom of his heart all that the other hath trespassed against him, and to make amends for that he himself hath offended; and if the other party will not be persuaded to a godly unity, but remain still in his frowardness and malice, the minister in that case ought to admit the penitent person to the Holy Communion, and not him that is obstinate.

"Provided that every minister so repelling any, as is specified in this, or the next precedent paragraph of this rubric, shall be obliged to give an account of the same to the ordinary within fourteen days at the farthest; and the ordinary shall proceed against the offending person according to the Canon."

The rubric of course receives a legitimate construction from the service to which it is prefixed. And in that service is to be found an exhortation in which are the following words:—

"... Therefore if any of you be a blasphemer of GOD, an hinderer or slanderer of His Word, an adulterer, or be in malice, or envy, or in any other grievous crime, repent you of your sins, or else come not to that Holy Table; lest after the taking of that Holy Sacrament the devil enter into you as he entered into Judas, and fill you full of all iniquities, and bring you to destruction both of body and soul."

I think that hinderers and slanderers of God's Word are

included in the category of evil livers specified in the rubric. It was admitted that these latter words could not be confined to persons guilty of immoral conduct. Indeed, from the contrary position, an obvious absurdity would follow; for, in that case, a person might deny the fundamental doctrines of Christianity, and nevertheless claim his right to the reception of the Holy Communion.

The law of the Church of England derived from these sources appears to have been anxiously framed to accomplish two objects; on the one hand, to impress on the parishioners the obligation of receiving the Sacrament of the Lord's Supper; on the other, to guard against the reception of it by those whose lives were not in conformity with the precepts of Christianity. It intended to secure the right of the worthy parishioner and to protect the clergyman in the execution of his duty to repel the unworthy parishioner.

In what this unworthiness consists, it has stated, partly in general partly in specific terms. But in both instances it has thrown upon the clergyman the duty of deciding whether the conduct of the parishioner desirous of partaking of the Sacrament did or did not incapacitate him from availing himself of that great but awful privilege. It placed the exercise of the discretion according to the principles of ecclesiastical law under the control and supervision of the ordinary, and upon him it cast the double duty, first, of advising the clergyman, and, secondly, if he agreed with his decision, of taking proceedings in court *pro salute animæ* against the parishioner, in order that he might be brought into a state of penitence qualifying him for the reception of the Sacrament, from which in his present condition he had been rightly repelled. The notion that a criminous layman, as well as a criminous clerk, is subject to ecclesiastical discipline has fallen into such comparative desuetude that this statement of the law may create surprise, but it is the law of the land. It is clear in any event, and this is the more important observation, that the clergyman is legally entitled to the advice and protection of his Bishop in the exercise of this great responsibility.

I think the evidence, fairly considered, shows that the defendant sought this advice; and surely, as the Bishop wrote the copy of the letter which the defendant was to send to the promoter justifying and adhering to his refusal, it cannot be successfully contended that the Bishop did not sanction his conduct.

It does indeed appear that the Bishop, unfortunately, I venture to think, corresponded with both parties separately, and, in his anxiety to make peace, wavered somewhat, perhaps,

in the expression of his opinion, accordingly as he addressed the defendant or the promoter; but, nevertheless, the substantial result is that, if he did not, as I think he did, actually authorise the action of the defendant, he at least did not forbid it.

How, then, has the clergyman offended against the ecclesiastical law as expressed either in the Canons or the Rubric? He had *primâ facie* ground for hesitating to administer the Holy Communion. He submitted that ground to his Ordinary, and either received no "order and direction" from the Ordinary at all, or received an "order and direction" which he has obeyed, and in either case has discharged his duty, and ought not to be made the subject of a criminal prosecution.

It was contended before me in argument that he had infringed the law in not, within fourteen days after his refusal to administer the Sacrament to the promoter, giving an account of his refusal to the Ordinary, according to the provisions of the rubric. But, in the first place, this is not an offence for which he is articulated. In the second place, I think I must consider the rubric as being on this head directory only. And in the third place, such an account would have been nothing but the barest formality in this case, inasmuch as the Bishop well knew, having been so apprised by the defendant on the 2<sup>d</sup> of October, that the defendant was about to refuse the Sacrament to the promoter on Sunday the 4<sup>th</sup>, and that he had been previously refused on two occasions by the curate of the defendant, acting under his direction.

Though I am of opinion that the defendant has established his first defence, for the reasons which I have stated, at the same time I do not think that I ought to shrink from the examination of the second line of defence, namely, that the conduct of the promoter furnished a justification of the action of the defendant in repelling him from the Holy Communion as being under the Canons and Rubric disqualified from partaking thereof.

In considering for this purpose the conduct of the promoter, I must bear in mind not only that he has, in terms, denied the eternity of punishment and the existence of the devil, but also that he has expunged from the Bible, on the ground of their indecent and irreligious tendency, large portions, many of which relate to other grave and important doctrines of Christianity, and among which are to be enumerated several passages containing our Saviour's own words and precepts.

With respect to the absolute denial of the eternity of punishment, and here I must observe that many of the passages struck out relate not only to the eternity of punishment, but to any punishment for sin, I am of opinion that such a position is at

variance with the plain teaching of the Church of England, expressed in her Formularies, and especially in the Communion Service and the Athanasian Creed. And I am further of opinion that the decision of the Privy Council in *Fendall v. Wilson* (2 Moore, P. C., N. S., 433) cannot be carried further than the passage which states the conclusion of their Lordships, and which is as follows:—

“We are not required, or at liberty, to express any opinion upon the mysterious question of the eternity of final punishment, further than to say that we do not find in the Formularies, to which this article refers, any such distinct declaration of our Church upon the subject, as to require us to condemn as penal the expression of hope by a clergyman that even the ultimate pardon of the wicked, who are condemned in the day of judgment, may be consistent with the will of Almighty God.”

The expression of such a hope is a very different thing from that absolute denial of the eternity of punishment which the promoter has declared.

The next subject for consideration is the denial, by the promoter, of the existence and personality of the devil. What is the teaching of the Church of England in her Formularies on this subject? Has she spoken ambiguously or clearly? Professing upon this as upon other points to be guided by Holy Scripture, has she treated this matter as one of importance, or the contrary?

The Greek word *ὁ διάβολος*, which occurs in the New Testament I believe at least 53 times,<sup>1</sup> is the usual rendering of the Hebrew word “Satan.” To the signification “adversary” or “enemy” which Satan implied, the Greek word added that of “slanderer,” or literally, “one who sets at variance by means of slander.” The devil is represented in Holy Scripture as the spiritual enemy who slanders God to man and man to God. I will here avail myself of, and adopt as my own, the language used by a very learned person on this subject.

“It would be a waste of time to prove that in various degrees of clearness the personal existence of a spirit of evil is revealed again and again in Scripture. Every quality, every action, which can indicate personality, is attributed to him in language which cannot be explained away.”

“From the beginning of the Gospel, when he appears as the personal tempter of our Lord, through all the Gospels, Epistles, and Apocalypse, it is asserted, or implied, again and again, as a familiar and important truth. To refer this to mere ‘accommodation’ of the language of the Lord and His Apostles to the

<sup>1</sup> *Blunt's Dictionary of Theology*, voce *Satan*.

ordinary Jewish belief, is to contradict facts, and evade the meaning of words. The subject is not one on which error could be tolerated as unimportant; but one important, practical, and even awful. The language used respecting it is either truth or falsehood; and unless we impute error or deceit to the writers of the New Testament, we must receive the doctrine of the existence of Satan as a certain doctrine of Revelation. Without dwelling on other passages, the plain, solemn, and unmetaphorical words of John viii. 44 must be sufficient: 'Ye are of your father the devil: . . . he was a murderer from the beginning, and abides not in the truth. . . . When he speaketh a lie, he speaketh of his own: for he is a liar, and the father of it.'"<sup>1</sup>

If this be a correct representation of the account given in Holy Scripture of the existence and personality of the devil, it would certainly be very strange if the Church of England had considered the belief in this existence and personality a matter of indifference—if indeed she had not considered such belief a necessary part of Christian teaching.

I turn to her Formularies, and especially to her Prayer-Book, which is often and truly said to be part of a statute, for information on this point. I find it under three heads:—1. Prayers; 2. Selections from Scripture; 3. Services.

I. In the Prayers I find the following passages:—

*In the Litany.*

"From the crafts and assaults of the *devil*, . . .

"Good Lord, deliver us."

"From all the deceits of the world, the flesh, and the *devil*,

"Good Lord, deliver us."

"That it may please thee . . . finally to beat Satan under our feet,

"We beseech thee to hear us, good Lord."

"And graciously hear us, that those evils, which the craft and subtilty of the *devil* worketh against us, be brought to nought."

—*Collect after the Litany.*

*Eighteenth Sunday after Trinity.—The Collect.*

"Grant thy people grace to withstand the temptations of the world, the flesh, and the *devil*."

II. As to selections from Scripture.—Among the most remarkable is the gospel for the fifth Sunday after Epiphany, the 13th chapter of St. Matthew, containing the Parable of the Sower of the Wheat and the Tares.

"The enemy that sowed," says the present Archbishop of Dublin, "the tares, we learn 'is the devil;' so that we behold Satan here not as he works beyond the limits of the Church, not

<sup>1</sup> *Dictionary of the Bible*, title *Satan*.

as he deceives the world, but in his far deeper skill and malignity as he at once mimics and counterworks the works of Christ."

"It is further noticeable, with what remarkable distinctness the doctrine concerning Satan and his agency, his active hostility to the blessedness of man, of which there is so little in the Old Testament, comes out in our Lord's teaching in the New, as v. 19, 'then cometh the wicked one,' and here 'the enemy that sowed them is the devil.'"

"It was not till the Son of Man actually appeared on the stage of the world that Satan came distinctly forward upon it also; but the instant that the Saviour opens his ministry for the setting up of the Kingdom of God, at the same instant Satan starts forward as the hinderer and adversary of it, the tempter of the Son of Man."<sup>1</sup>

This seems to be the teaching of the Prayer-Book, as is further shown in the following passages:—

*Epistle for the Sixth Sunday after the Epiphany.*—"He that committeth sin is of the *devil*, for the *devil* sinneth from the beginning."

"For this purpose the Son of God was manifested, that he might destroy the works of the *devil*."—1 St. John iii. 8.

*First Sunday in Lent.*—The whole Gospel of St. Matthew iv. 1-12, relating to Our Lord being "tempted of the *devil*."

*Wednesday before Easter.*—The Gospel, St. Luke xxii. 3. "Then entered *Satan* into Judas surnamed Iscariot."

*Third Sunday after Trinity.*—The Epistle, 1 St. Peter v. 8. "Be sober, be vigilant; because your adversary the *devil* as a roaring lion walketh about seeking whom he may devour."

*Nineteenth Sunday after Trinity.*—The Epistle, Ephesians iv. 27. "Neither give place to the *devil*."

*Twenty-first Sunday after Trinity.*—The Epistle, Ephesians vi. 11. "That ye may be able to stand against the wiles of the *devil*."

*St. Michael and All Angels.*—For the Epistle, Revelations xii. ver. 9. "And the great dragon was cast out, that old serpent called the *devil* and Satan." . . . Verse 12, "the *devil* is come down unto you having great wrath."

III. In the particular Services I find the following passages:—

#### *Baptismal Service.*

"I demand therefore,

"Dost thou, in the name of this child, renounce the *devil* and all his works . . ."

<sup>1</sup> *Notes on the Parables*, by R. C. Trench; Parable II., The Tares, pp. 68, 69, 70.

“Grant that he may have power and strength to have victory, and to triumph against the *devil*, the world, and the flesh.” . . .

“We receive this child into the congregation of Christ’s flock, and do sign him with the sign of the Cross, in token that hereafter he shall not be ashamed to confess the faith of Christ crucified, and manfully to fight under his banner against sin, the world, and the *devil*.”

*Catechism.*

*Answer.*—“First, that I shall renounce the *devil* and all his works.”

*Visitation of the Sick.*

*Collect.*—“ . . . Renew in him, most loving Father, whatsoever hath been decayed by the fraud and malice of the *devil*.”

*Consecration of an Archbishop or Bishop.*

The Epistle, 1 Timothy iii. 6.—“Not a novice, lest being lifted up with pride he fall into the condemnation of the *devil* . . . lest he fall into reproach and the snare of the *devil*.”

Lastly, I will again cite what, with reference to this particular suit, is a passage of some importance, and has been already mentioned for another purpose. It is taken from an Exhortation in the Holy Communion service the Sunday before the celebration.

“Therefore, if any of you be a blasphemer of God, an hinderer or slanderer of His Word, an adulterer, or be in malice, or envy, or in any other grievous crime, repent you of your sins, or else come not to that Holy Table, lest, after the taking of that Holy Sacrament, the *devil* enter into you as he entered into Judas, and fill you full of all iniquities and bring you to destruction, both of body and soul.”

It is remarkable that this striking passage is to be found in both the Prayer-Books of Edward the Sixth (1549, 1552), and also in the Order of the Communion of 1548, which is as follows:—

If a man be in any notable crime, “let him awhile bewail his sins and not come to this Holy Table, lest, after the taking of this most blessed bread, the *devil* enter into him as he did into Judas, to fulfil in him all iniquity, and to bring him to destruction, both of body and soul.”<sup>1</sup>

I must not omit reference to a very important formulary of the Church. In the Thirty-nine Articles there is this passage; it occurs in the 17th Article:—“For curious and carnal persons,

<sup>1</sup> Cardwell, *Liturgies of Edward VI.*, pp. 429, 430.



lacking the Spirit of Christ, to have continually before their eyes the sentence of God's predestination, is a most dangerous downfall, whereby the *devil* doth thrust them either into desperation or into wretchlessness of most unclean living, no less perilous than desperation."

I think it unnecessary to travel further into a statement of the other passages of Scripture, grave and important as some of them are, which do not immediately relate to the eternity of punishment or the existence of the devil, and which are rejected by the promoter; because I am of opinion that the avowed and persistent denial of the existence and personality of the devil did, according to the law of the Church, as expressed in her Canons and Rubric, constitute the promoter "an evil liver," and "a depraver of the Book of Common Prayer and administration of the Sacraments," in such sense as to warrant the defendant in refusing to administer the Holy Communion to him, until he disavowed or withdrew his avowal of this heretical opinion; and that the same consideration applies to the absolute denial by the promoter of the doctrine of the eternity of punishment, and of course still more to the denial of all punishment for sin in a future state, which is the legitimate consequence of his deliberate exclusion of the passages of Scripture referring to such punishment.

This disqualification of the promoter to receive the Holy Communion is not in my judgment removed either by the fact that he has published a volume of prayers taken from our Liturgy, or that he has expressed his belief in the inspiration of Holy Scripture. Nor do I stop to consider how such a declaration can be reconciled with his excision of those passages in Scripture to which I have referred.

I must consider, therefore, that the second as well as the first defence is established, and I must dismiss this suit with costs.

## KEET v. SMITH AND OTHERS.

*It is not expedient that a tombstone should be erected in the churchyard of a parish with an inscription describing the deceased person as "the daughter of the Rev. A. B., Wesleyan Minister" where the incumbent refuses his consent to such an inscription, and the Bishop of the diocese disapproves of it.*

*Law as to Faculties considered.*

*A Faculty to erect such a tombstone refused.*

THIS case was only argued on one side, that of the applicant for the Faculty. I gave judgment in it on the 31st of July 1875.

An appeal has been asserted, and is still pending.

The case is reported in the Law Reports, 4 Admiralty and Ecclesiastical, page 398.

JUDGMENT.—This is an appeal from the Consistory of Lincoln.

The subject of the appeal is the refusal of that Court to grant a faculty for the erection of a tombstone containing the following inscription:—"In loving memory of Annie Augusta Keet, the younger daughter of the Rev. H. Keet, Wesleyan Minister, who died at Ouston Ferry, May 11, 1874, aged seven years and nine months.—'Safe sheltered from the storms of life.'"

It appears that the inscription "Wesleyan Minister" was not objected to by the incumbent, and was allowed by the Court. The prefix "Reverend" was objected to by the incumbent, and disallowed by the Court.

I must express regret that the petitioner should not have been content with the description "Wesleyan Minister;" it is strictly speaking his accurate description as "George Edward Smith, clerk or vicar," would be, strictly speaking, the accurate description of the incumbent.

The aspect of the question in this Court is slightly varied from that which it assumed in the Court below.

The Chancellor of Lincoln declined to allow the issue of a citation to the incumbent, calling upon him to show cause why the faculty prayed should not be granted. In this Court, however, that citation has, according to its usual practice, already issued, and has been served upon the incumbent, and he has not appeared in answer to the citation; but he has not withdrawn his opposition to it.

The law as to the rights of the incumbent and parishioners with respect to grave-stones in churchyards is often but partially understood and carelessly stated. I will endeavour to lay it down correctly.

The churchyard is the freehold of the incumbent, subject to the right of the parishioner or stranger happening to die in the parish, to simple interment, but to no more. Indeed, the incumbent has the right to pasture animals which do not injure the bodies interred in the churchyard; and every grave-stone, of course, interferes with that pasturage.

The Incumbent for this, as well as for other more important reasons, has a *prima facie* right to prohibit altogether the placing of any grave-stone, or to permit it upon proper conditions, such as those which relate to the size and character of the stone, the legality or propriety of the inscription upon it, or the payment of a proper fee. Usage, indeed, has much favoured the placing of such stones, and as a general rule, the incumbent permits them; while the exercise of his right of refusal has become, or perhaps always was, subject to the control of the Ordinary.

None of my predecessors was, I think, better acquainted with the mixed law and practice of the Ecclesiastical Courts in cases of this description than Sir Herbert Jenner Fust. In the important case of *Brecks v. Woolfrey*<sup>1</sup> he drew a clear distinction between the general right of the incumbent to refuse permission to place a grave-stone, and his right to refuse such permission on the ground that the inscription upon it was contrary to law; and while upon the latter special ground he overruled the refusal of the incumbent, he was careful to show no interference with the right of the incumbent to refuse, according to the general law, his consent.

And here I should observe that the two legal positions, namely, that simple interment is a matter of right, and the placing a grave-stone a matter of permission, are in no way affected by the fact to which I was referred, and which is unfortunately too true, that inscriptions of an improper, ludicrous, and heathen character are to be found in some of our churches and churchyards. Such a fact only proves the culpable indifference and carelessness in this respect of those who had

<sup>1</sup> Curteis's Rep., p. 80.

the control of the church or churchyard at the period when the censurable inscriptions were allowed; not that there was no power in the clergyman or the Ordinary to refuse them. The notion that an incumbent is bound to permit an inscription at variance with religion, morality, or propriety is entirely erroneous, and not the less mischievous, because the law holds that tombstones once lawfully erected become, in a sense, the property of the person who erected them.—(*Spooner v. Brewster*, 3 Bingham's Rep. 139.)

Passing then from the considerations of the rights of the incumbents and parishioners, I approach the examination of the law with respect to the power and authority of the Ordinary, to whom application for a faculty must be made.

With respect to the grant or refusal of a Faculty, two distinct considerations occur:—

First, Is the subject lawful? Secondly, Is it expedient?

If the former question be answered in the negative, the second, of course, need not be entertained, but if the former question be answered in the affirmative, it may, nevertheless, well be that, having regard to the circumstances, the Ordinary may think the grant of a faculty inexpedient, and on that ground alone refuse it.

It is a mistake, therefore, to suppose that when the petitioner for a faculty has shown that the object for which he requires it is not illegal, that he is necessarily entitled to it.

The industry of counsel has brought to the attention of the Court a considerable number and variety of instances in which the epithet "Reverend" has been applied both by authors generally, and occasionally by writers of epitaphs, to distinguished persons of the laity not in Holy Orders, and sometimes to remarkable women.

What is the argument built upon this historical fact?

It can only be that the title is one which is not peculiar to the ministers of any religious body, and which cannot be claimed by any such ministers as their special designation. The judge, the statesman, the officer in the army or navy, any ordinary gentleman, or indeed gentlewoman, might, upon this hypothesis, claim to have this prefix to their name, and nobody would be injured thereby.

But is this really and honestly the ground on which the petitioner rests his claim? Is it not obvious that in the present case the title "Reverend" is not claimed because everybody is entitled to it, but because the claimant is desirous of having it recorded that he is specially entitled to it as being a Wesleyan minister? I have no doubt that the Wesleyan minister in this case would conscientiously and honourably admit this to be so.

Instances were also adduced in which Ministers of State

had addressed Wesleyan ministers with the superscription of "Reverend," and if the question were simply one of social status or general etiquette, this reference would be very pertinent and proper.

But the case is surely different when the question relates to the alleged obligation of the clergyman to confer, by a permanent inscription in his own churchyard, upon another person that peculiar religious title by which he alone has been hitherto designated and known to his own parishioners and his own church.

It has been argued, indeed, that there was a time when the clergyman was not addressed by the title of Reverend, but by some other title of distinction;—it is not, however, denied that this title has been accorded to them for more than two centuries; whereas I am informed by counsel that previously to 1811 the assumption of the title in dispute by a Wesleyan minister was absolutely forbidden by the ruler of the Wesleyan body.

I do not, however, think that the Court has simply to decide whether the prefixing the title "Reverend" to the description "Wesleyan Minister" be so clearly illegal that, even if the clergyman consented, the Court ought to prohibit it. I do not pronounce an opinion to that effect, but it is the duty of the Court to consider not only whether it would be lawful in the abstract to allow such an inscription as this, but also whether it be expedient and proper to do so. This consideration sometimes must, and often may, depend upon local circumstances, of which the Bishop is by reason, law, and practice, the fittest judge.

I have heard it frequently stated by my immediate and distinguished predecessor in this chair (Dr. Lushington), that in all questions of faculty great weight ought to be ascribed to the opinion of the Bishop of the diocese. Now, in the present case the Bishop has deliberately and emphatically expressed an opinion adverse to the prayer of the petitioner. The Bishop in his letter to the petitioner says:—

"... What title should be given you by your own co-religionists is not the point at issue, and I express no opinion upon it. But the question is whether the title of 'Reverend' should be conceded to you on a tombstone by ministers of the Church of England, who are the responsible guardians of her churchyards.

"It is not easy to determine what is the exact meaning of the title of 'Reverend' as claimed by a Wesleyan preacher.

"If that title is to be taken to imply that he is a person in holy orders, duly qualified to administer the word of God and Sacraments in a church, then I am bound to say that the laws to which I am subject would not allow me to recognise him in that capacity.

"I hope to have the happiness before long of admitting some

Wesleyan preachers to holy orders in the Church of England after due training and trial; but I should be chargeable with equivocation and duplicity towards them, and with dishonesty and treachery towards the Church of England, if I were now to designate them by the title of Reverend, to which they will have a just claim after ordination and by its means. If the title of 'Reverend,' to which you lay claim, and by which you desire to be designated in a consecrated burial-place of the Church of England, is intended only to indicate that you are appointed to preach in a Wesleyan place of worship, I would venture to remind you of another epitaph, that which was inscribed on the tomb of the founder of Wesleyanism himself. There John Wesley was described as 'the Patron and Friend of Lay Preachers.' He regarded his preachers as laymen; he warned them against calling themselves ministers, and after his death the Wesleyan Conference, in 1793 and 1794, forbade them to assume the title of 'Reverend.' Any one who gives them that title contravenes the injunctions of John Wesley, for whose memory I entertain sincere respect, and to whose authority I desire to defer in my relations with the members of that important religious community which derives its name from him.

"A title is a distinctive attribute belonging to a special person or class. If I give a title to a person to whom it does not belong, I am liable to a charge of flattering him, and of wronging those to whom the title does belong.

"For such reasons as these I have abstained from giving the title of 'Reverend' to Wesleyan preachers, not (I need hardly say) from any feeling of disparagement towards them, but because I honour consistency and truth, and because I am sure they would despise me if I acted against my conscience and were to practise that kind of liberality which courts popularity, by giving away what does not belong to it."

I do not think that it would be proper or consonant to practice that this Court should overrule not only the dissent of the incumbent, but also the deliberate judgment and authority of the Bishop, in a matter not of strict law applicable to all cases, but of discretionary permission applicable to the particular case; and I think that in refusing to do so, I act in accordance with the spirit both of the general law and of those rubrics in the Book of Common Prayer which relate to the authority of the Ordinary.

I decline to issue the faculty as now prayed.



































































